



ORDER BELOW EXH.05

This is an application filed by plaintiffs for temporary injunction restraining defendants from causing obstruction to their peaceful possession and cultivation over the suit property.

2. **The brief facts of plaintiff's case, are as under:-**

The field Gat No. 138 area 0.27 R situated at village Mouje Madha, Tq. Madha, Dist. Solapur having four boundaries to the East :-field Gat No.135, to the South :- stream (ओढा), to the West :-field Gat No. 139 and to the North:- Gat No. 136 (here-in-after referred to as "suit property").

3. The field Gat No. 138 and the land of eastern side bearing Gat No. 135 are owned and possessed by father of plaintiff Nos. 1, 2, 4 and 5 and husband of plaintiff No.3 Hari Shankar Bhangе. He died on 13/04/2016. Plaintiffs are his heirs. Their names were mutated in field Gat No. 138 and 135 vide mutation entry No.8138 on 30/05/2019. Both field Gat No. 138 and 135 are in possession of plaintiffs. Defendant have no any right in the suit property.

4. The field of defendant bearing Gat No. 136 is situated towards northern side of field Gat No. 138. The field Gat No. 136 was purchased by father of defendant No.1 namely Limbaji Laxman Bhangе from one Gopinath Dagdu Jagdale. Plaintiffs came to know about it in the month of September 2023 and, thereafter, they have obtained the copy of said sale-deed on 13/09/2023. In the

month of September, 2023, defendants were saying to plaintiffs that their cultivation over field Gat No. 136 was till the Stream (ओढा) which was situated on the southern side of field Gat No. 138. Therefore, defendants are obstructing plaintiffs possession over the suit property. They are taking disadvantage of the fact that in the sale-deed dated 16/12/1991 towards northern side the Stream (ओढा) is mentioned, and therefore, they are saying that they have purchased field till Stream (ओढा). Actually, towards northern side of field Gat No.136 there is suit property Gat No. 136 and 138. Therefore, this is suit for declaration that one of the four boundaries mentioned in the sale-deed dated 26/12/1991 i.e. towards southern side, there is Stream (ओढा) is illegal, not binding on the right of plaintiffs over the suit property and for permanent injunction. Hence, prayed to allow the application.

5. Defendants have filed their Written Statement-cum-reply (Exh.14). They have denied all adverse allegations levelled against them. It is their specific contention that the original survey number of the field Gat No. 138 was 55/4. The original owner of it was Sahebrao Bhang. Its original area and present area is 27 R, Sahebrao had sold the said property to Hari Shankar Bhang and Vilas Shankar Bhang on 21/06/1975 vide registered sale-deed. The survey No. 55/2 was converted into Gat No.136 having total area 1.33 which includes 2 R Potkharab land. Defendant No.3 has purchased the said property from Gopinath Dagadu Jagdale on 26/12/1991 for the consideration of Rs.35,000/-. Since then, he is owner and possessor of it. The field Gat No.139 was prepared by merging survey Nos. 55/3, 56/3, 56/5 which was originally owned by Khandu Chandu Bhang. Thereafter, it was purchased by Bhaskar Baburao Bhang. The area of survey No. 55/1, 55/2 now which was Gat No. 137 and 136 is 1 H 33 R. The said Gat No. 138 was situated on east-south corner. Towards western and northern

side of suit property, there is Gat No. 136. The area of Gat No. 136 is also towards south-west side. Thereafter, there is area of field Gat No. 137 towards eastern and northern side. There was never Gat No. 139 towards western side of Gat No. 138 as alleged by plaintiffs. Even in sale-deed of plaintiffs also, it was not mentioned. In between old survey No. 55/1, 55/2, 55/3 and 55/4 there is old Dharfal road facing towards east-west direction. Towards southern side of said road, there were shares of survey No.55/3, 55/1, 55/2 and 55/4 till southern side stream (ओढा) and till today they are in possession of the owner of said survey numbers. Plaintiffs were never in possession of suit property as contended by them. By way of this suit, plaintiffs were trying to grab the southern side area of field of defendant by concealing the real situation of the spot. On all these grounds, they prayed to reject the application.

6. Following points arise for determination and findings against each of them are as under for reasons mentioned thereunder:-

Sr. No.	POINTS	FINDINGS
1.	Whether plaintiffs prove that they are having prima-facie case in their favour ?	No
2.	Whether they further prove that balance of convenience lies in their favour ?	No
3.	Whether plaintiffs prove that they would suffer irreparable loss, if the injunction is refused ?	No
4.	What Order?	Application is rejected as per final order

REASONS

7. Heard learned counsel for both sides. They argued as per their contentions in their application and reply. Therefore, to avoid repetition , I did not reproduce it again here. They have invited my attention to various documents filed on record.

As to Point Nos. 1 to 3 :-

8. It is the contention of plaintiffs that four boundaries mentioned in the sale-deed executed in favour of defendant No.1 by one Gopinath Dagadu Jagdale dated 26/12/1991 in respect of Gat No. 136 are incorrect i.e. towards southern side, the stream (ओढा) is shown to be situated, which is illegal and not binding on the possession of plaintiffs over Gat No. 138.

9. Plaintiffs are claiming to be owners of suit property field Gat No. 138 having four boundaries to the East :- field Gat No. 135, towards South :- Stream (ओढा), towards West :- field Gat No. 139 and towards North :- field Gat No. 136. Therefore, it is necessary to see whether above four boundaries are mentioned in the sale-deed of suit property or not, which is purchased by father of plaintiffs namely Hari Shankar Bhange and uncle of plaintiff Vilas Shankar Bhange from one Sahebrao Bandu Bhange. In the said sale-deed dated 21/06/1975, by which the father of plaintiff has purchased the suit property field Gat No.138 the four boundaries are mentioned as under :-

Towards East	-	Field Gat No. 135
Towards South	-	Stream (ओढा)
Towards West	-	Field Gat No. 136
Towards North	-	Old Darfal road.

10. Thus, this is the position of four boundaries of the suit property by which plaintiffs claiming their title and possession over the suit property. It is pertinent to note that plaintiffs filed suit for declaration that the sale-deed by which the father of defendant No.1 has purchased field Gat No. 136 and that the southern boundary, which is mentioned as stream (ओढा) in the said sale-deed is illegal and not binding on plaintiffs. However, plaintiffs have kept their silence about their sale-deed. Even plaintiffs did not take any pains to mention in the plaint or in Exh.5 that the four boundaries of their sale-deed are incorrect and they have not mentioned four boundaries of the suit property, as per sale deed. Thus, plaintiffs have mentioned wrong four boundaries of the suit property and claiming injunction against defendants by contending that the four boundaries mentioned in the sale-deed of defendant No.1 are incorrect. Thus, plaintiffs have suppressed material facts from Court and does not come before Court with clean hands.

11. As per Section 36 of the Specific Relief Act, the preventive relief of temporary or perpetual injunction is at the discretion of the Court, being equitable relief. It is settled law that for getting the equitable relief from the Court, the person who seeks injunction must come before Court with clean hands, however, plaintiffs without seeking any rectification of the sale-deed by which their father Hrishankar Bhang and uncle Vilas Shankar Bhang has purchased the suit Gat No.138 and after their death, plaintiffs are claiming to be in possession if it and claiming injunction against defendants by contending that four boundaries of the sale-deed of defendant No.1 are incorrect.

12. It is pertinent to note that the sale-deed dated 26/12/1991 was executed by one Gopinath Dagdu Jagdale in favour of defendant No.3 Limbaji

Laxman Bhang. Said Gopinath is not made party to this suit by plaintiffs. It is settled law that unless consequential relief are claimed, the relief of declaration cannot be granted. Thus, in this case unless plaintiffs seeks rectification of the sale-deed dated 26/12/1991 which is executed by one Gopinath Dagadu Jagdale in favour of defendant No.3 and for rectification of the four boundaries mentioned in the sale-deed by which the father of plaintiffs have purchased the suit property i.e. sale-deed dated 21/06/1975, mere suit of declaration is not maintainable. Moreover, as per Section 26 of the Specific Relief Act, the rectification of instrument can be sought by parties to the said sale-deed. However, plaintiffs are not party to the said sale-deed. Neither the executant of the said sale-deed i.e. Gopinath Dagadu Jagdale has brought any such suit nor he or his legal heirs are made parties to this suit. Under these circumstances, without seeking rectification of the sale-deed dated 26/12/1991 and 21/06/1975 mere suit for declaration is not maintainable.

13. As regards documents filed by plaintiffs are concerned, the 7/12 extract of field Gat No. 138 filed below list Exh.4 shows that field Gat No. 138 is in possession of plaintiffs. It is settled law that title follows possession. Thus, title of plaintiffs is as per sale-deed dated 21/06/1975 and the suit property mentioned in the plaint para No.1 i.e. Gat No. 138 both are different. Therefore, even if it is presumed that the plaintiff are in possession of field Gat No. 138 as seen from the 7/12 extract, it is as per the four boundaries mentioned in the sale-deed dated 21/06/1975 and not as per the four boundaries mentioned in the plaint and this application. However, it is seen that four boundaries mentioned in the sale-deed and the plaint are different. Therefore, on the basis of 7/12 extract, it cannot be said that plaintiffs are in possession of the suit property i.e. field Gat No. 138 as per four boundaries mentioned in plaint.

14. Plaintiffs have also filed some mutation entries and other revenue record. But as plaintiffs did not come before Court with clean hands and as four boundaries mentioned in the sale-deed by which plaintiffs claiming their ownership are different than mentioned in plaint. Therefore, those documents are not of any help to plaintiffs to prove their possession.

15. The learned counsel for plaintiffs has argued that the sketch map drawn by defendants below their written statement (Exh.14) cannot be read, as per Section 83 of the Evidence Act being a private map. He has placed his reliance on the Judgment of the Hon'ble Supreme Court in a case of **Ramkishor Sen Vs. Union of India, 1966 AIR SC 644.** I have gone through it and considered the ratio laid down therein.

16. It is true that as per Section 83 of the Evidence Act, there is only presumption as to maps or plans made by the authority of the Government and other maps to be proved to be accurate by the parties. However, in this case plaintiffs themselves are coming with a case that the four boundaries of the sale-deed of defendant No.3 are incorrect. However, I have already observed above that plaintiffs have suppressed fact of incorrect four boundaries mentioned in their sale-deed and claiming injunction on the basis of mentioning wrong four boundaries in the suit. Under these circumstances, it is the duty of plaintiff to attach the sketch map of the suit property as per provisions of Order VII Rule 3 of the Code of Civil Procedure, but the plaintiff failed to attach any sketch map. Rather defendants have filed the sketch map to show the real position of the suit property. Even on perusing the village map filed by plaintiffs below list Exh.17 that the area of Gat No. 138 and Gat No. 136 are in one straight in one line, however, it is admitted position that the area of Gat No.138 is only 0.27 R land

and area of Gat No.136 purchased by defendant No. 3 in the year 1991 is 1H 35R. Therefore, it supports the contention of defendants that the situation of the suit property is as per sketch map and the filed Gat No. 138 is situated on east-south corner.

17. I have already observed above that plaintiffs are seeking the injunction by mentioning wrong four boundaries in the plaint, which are not mentioned in the sale-deed of the property purchased by plaintiffs father. Moreover, plaintiffs did not take pains to plead it nor sought any rectification of their sale-deed and suppressed the material facts from the Court. Therefore, plaintiffs are not entitled to get the discretionary and equitable relief of injunction.

18. Thus, in view of above discussion, I hold that plaintiffs failed to prove that prima-facie case and balance of convenience lies in their favour and that they will suffer irreparable loss. I have, therefore, recorded *Negative* findings of Point No. 1 to 3.

As to point No. 4:-

19. All observations made above are prima-facie in nature and made only to decide this application. They do not affect the merits of the case. In view of negative findings of Point No. 1 to 3, I proceed to pass following order:-

ORDER

1. The application (Exh.05) is rejected.
2. Costs in main cause.

Date : 23/12/2024.

(G. V. Gandhe)
2nd Jt. Civil Judge, Jr. Dn.,
Madha.

CERTIFICATE

I affirmed that, the contents of this PDF file order are same word to word as per original order.

Name of Stenographer : A. A. Jadhav (Grade-3)

Court Name : Shri. G. V. Gandhe, 2nd Jt. C.J.J.D.
and J.M.F.C., Madha.

Order signed by P.O. : 23/12/2024

Order uploaded on : 23/12/2024