

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION,**KARAD AT :KARAD**

(Presided over by : Sabina A. Malik)

R.C.S. No. 771/2020**Order Below Exh. 5****CNR No. MHST05-000460-2020**

Aslam Kadar Momin --- Plaintiff

Vs.

Vikas Haribhau Jadhav --- Defendants

ORDER BELOW EXH.05

- 1) This suit is filed for perpetual injunction.
- 2) By Exh. 5, the plaintiff is seeking relief under Order 39 Rule 1, 2 and 151 of The Code of Civil Procedure.
- 3) It is submitted that the suit property city survey no. 1193, grampanchyat property no. 1504 mentioned in plaint para 1A is owned and possessed by the mosque for the people of the Muslim Community and the plaintiff is maintaining it as the Manager of the property. The etry to that effect is found with grampanchayat and city survey record. The property is a private property and hence not registered with the Charity Commissioner or with Waqf Board. The property is being used as a mosque for public. There are many shops in the open space in front of the mosque, which are rented out. The proceeds from this rent is being used for the maintenance of the mosque.
- 4) It is contention of plaintiff that the suit property is originally

owned by Rajemahadik, the said property was and is given to the family of plaintiff for the community in the times of Shivaji Maharaj. Since that time, the property is in possession of plaintiff's family. The plaintiff and his community are enjoying the property since then. All the religious ceremonies are performed therein. The plaintiff and all the devotees were and are peacefully using the suit property 1B to go and come to the suit property.

5) On 14/11/2020, when plaintiff and people of his community were cleaning the suit property, defendant no. 1 to 11 came, abused and threatened them. Defendant no. 1 to 11 told them that the suit property is not the grampanchayat property no. 1504, but grampanchayat property no. 1518. Alongwith defendant no. 12 they are to set up shop, they vandalized the suit property 1B. On Diwali holidays the defendant no. 12's officer gave false notice to the plaintiff. Police threatened the plaintiff and did not take his complaint.

6) On 17/11/2020 again, defendant no. 1 to 11 came to the suit property and started its measurement. They also threatened and abused the plaintiff and people of the plaintiff's community. Hence, plaintiff is constrained to file present suit for perpetual injunction. Plaintiff says that he has a prima facie case. If the relief is not granted he will suffer irreparable loss. Hence, he has prayed to allow the application.

7) Defendant nos. 1, 5, 6 and 8 have filed their reply to this application vide Exh. 23. They have denied all the contentions of Exh. 05. It is stated that with intention to grab the property, the plaintiffs have illegally included grampanchyat property no. 1598 in the city survey no. 1193 situated in village Tarale, Tal. Patan, Dist. Satara. The grampanchayat property no. 1518 having area 10x40 was originally owned by grampanchayat Tarale. Said 10x40 area is situated towards

Eastern side of city survey no. 1193. Western side of area 10x40 i.e. grampanchayat property no. 1504 is in the name of Rajwalli Pirsahab Darga, Tarale and Rajjak Yasin Momin is mentioned as owner of the said city survey. In support of contentions the defendants have filed rough map of suit property with their written statement.

8) It is further contention of defendants that the grampanchayat Tarale was and is the owner of area 10x40 of grampanchayat property no. 1518. Said property is in front of Tarale S.T. Stand. Considering its commercial value, the grampanchayat has leased out said property from time to time to small businessmen. The persons mentioned in the grampanchayat namuna 11 are tenants in the said property. In the year 1994-95, the first city survey was conducted in village Tarale. In the year 2016, the grampanchayat approved that survey. The scheme was implemented by Deputy Superintendent of Land Records, Patan. At the time of city survey, neither notice was issued in the name of plaintiff nor in the name of grampanchayat. Thereafter, in the year 2018, the City Survey Officer, without issuing notice to grampanchayat, counted area of 10x40 of grampanchayat property no. 1518 and land of Darga in city survey no. 1193. Both these properties are far from each other despite of that those properties are falsely shown in City Survey No. 1193.

9) Grampanchayat Talare first time came to know that the area 10x40 included in City survey no. 1193, when tenant of that property Iqbal Momin, who is doing hotel business in the said property started construction with the permission of Public Mosque Manager Aslam Momin. Thereafter, in the month November 2020, when plaintiff and others planned to start construction, the grampanchayat issued notice to them and instructed them to stop construction. Thereafter, on 17/11/2020, the notice was issued not to construct without permission in

the suit property or to show record, if any registration of Mosque is with the Charity Commissioner as Devasthan. On 19/11/2020, grampanchayat Tarale informed Deputy Superintendent of Land Records, Patan for re-examination city survey record.

10) In reply to notice plaintiff claimed that the City Survey No. 1193 is of old grampanchayat property no. 1271 and 1124 and the said properties are of Muslim Community. Plaintiff has not claimed his ownership over suit property. Hence, grampanchayat verbally cancelled the tenancy of plaintiff and other tenants Firoz Momin and Ilahi Momin from the suit property. Despite notice plaintiff and other tenants with the help of manpower have constructed temporary shed in the suit property up to Tarale Vekhandwadi road. With the help of false contentions, the plaintiff has filed present suit and by misleading the Court, he is trying to obtain temporary injunction. Plaintiff has not made the Public Works Department party to the present suit. Hence, there is bar of non-joinder of necessary party to the present suit. Plaintiff has not come before the Court with clean hands. If the application at Exh.5 is granted, the defendants would suffer irreparable loss. Defendants have prima facie case and the balance of convenience tilts in their favour. Hence, they prayed to dismiss the temporary injunction application.

11) Heard Ld. Advocates for both sides.

12) On the basis of the pleadings, the documents filed on record and the arguments, following points arise for determination and findings recorded thereon with reasons are as under :-

Sr.No.	POINTS	FINDINGS
1.	Whether plaintiff has a prima facie case?	... In the affirmative.

2.	Whether balance of convenience lies in favour of plaintiff ?	... In the affirmative.
3.	If injunction refused, will plaintiff suffer irreparable loss ?	... In the affirmative.
4.	What order?	... As per final order.

REASONS

AS TO POINT NOS. 1 TO 3 :-

13) Heard Ld. Advocates for both sides. Perused record.

14) The issue of dispute is identification of the property and also the title. There is objection of each of party is to the others possession. Unless evidence is lead, no solution would be possible on merit. As of now, the city survey no. 1193 is standing in the name of public mosque and the Aslam Kadar Momin is the manager of the said mosque. In support of his contentions the plaintiff has filed on record extract of city survey no. 1193. If this entry is erroneous or illegal, the defendants would have by legal means prove their stand and get it corrected. They can not take law in hand.

15) It is contention of the defendants that the grampanchayat has verbally cancelled tenancy of plaintiff and other tenants in the suit property. Presuming without proof that the plaintiff is tenant of the grampanchayat, the grampanchayat would have to use lawful machinery to terminate the tenancy of the plaintiff. The grampanchayat can not terminate the tenancy of the plaintiff orally. Thus, the defendants herein prima facie have threatened to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to the property in dispute. Under such circumstances, the plaintiff has brought prima facie case that the

defendants are obstructing his possession. If no orders are passed for obstructing defendants, the plaintiff gets out of his possession and irreparable loss will be caused to him. However, if injunction is granted, the present condition would prevail. No harm which can not be compensated in terms of money would be caused to the defendants if injunction is granted. The balance of convenience is in favour of the plaintiff. If the injunction is not granted, the balance does not tilt in favour of defendants. Hence, plaintiff has a prima facie case, the balance of convenience is in favour of the plaintiff. If the injunction is not granted, the plaintiff will suffer irreparable loss. Hence, point nos. 1 to 3 are answered in the affirmative.

AS TO POINT NO. 4 :-

16) In consonance with the discussions herein above, point no.4 is answered as per final order.

ORDER

- 1} Application is allowed.
- 2} The defendant nos. 1 to 14 and anybody on their behalf are hereby directed not to obstruct plaintiff's peaceful possession over the suit property and not to alienate suit property in any manner till final decision of the suit.
- 3} Costs in consequences.

Karad

(Sabina A. Malik)

Date : 01st December 2021

Civil Judge Sr.Dn., Karad