

Order Below Exh. No. 177 in R.C.S. NO. 390/1998**Ramesh Patil and Others.****Vs.****Shivaji Ramchandra Patil and Others.**

This is application for temporary injunction filed by plaintiff no. 3 against plaintiff no. 1 & 2 restraining them from carrying out digging work for constructing "Well" in the agricultural suit properties gat no. 1996/1 & 1996/2 till the final disposal of suit.

2. As per plaintiff no. 3, though this suit came to be instituted by plaintiff no. 1 & 2 for relief of partition but due to their unwillingness to continue with the suit, he got transposed as plaintiff no. 3. As per plaintiff no. 3, plaintiff no. 1 & 2 are in process of digging the "Well" in joint & undivided suit property gat no. 1996/1 & 1996/2 resulting into obstruction, change in nature of suit properties, damage to suit property along with heavy loss to him. Accordingly, he prayed for relief of temporary injunction.

3. The application came to be resisted vide say at exhibit 181. As per plaintiff no. 1 & 2, they are undertaking digging work of "Well" in respect of suit property gat no. 1996/1 & 1996/2 which are under their cultivation due to non-availability of water supply to their crops. Plaintiff no. 3 has not denied scarcity of water in gat no. 1996/1 & 1996/2. They further contended that the application is simply not tenable for the reason that due to digging the "Well" there does not arise any question of danger or wastage of suit property. On the other hand, if "Well" is not constructed then they would not be able to beneficially enjoy the suit property resulting into loss of their crop ultimately leading to their irreparable loss. Accordingly, they

prayed for rejection of application.

4. Perused application & say. Perused the record. Heard argument of both sides. Ld. counsels of both sides argued in line with their application & say respectively.

5. Following points arose for my determination. I record my findings thereon for the reasons to follow them:-

Sr. No.	Points for determination	Findings
1	Does the plaintiff no. 3 prove prima-facie case in his favour?	No
2	Does the plaintiff no. 3 prove balance of convenience in his favour?	No
3	Does the plaintiff no. 3 prove that irreparable loss would cause to him if injunction is not granted?	No
4	What order?	As per final order.

Reasons as to point no.1 -

6. It is for the plaintiff no. 3 to prove prima facie case, balance of convenience and irreparable loss. It is fact of the record that plaintiff no.3 was earlier defendant no.4 and transposed later on as plaintiff as per order passed by the court. The basis of present application is probable attempt on the part of plaintiff no. 1&2 of digging "Well" in suit property gat no. 1996/1 & 1996/2 thereby leading to obstruction, change in nature, damage to suit property along with heavy loss to applicant i.e. plaintiff no. 3. The say filed by plaintiff

no. 1 & 2 leads to shorten down the question further as their say leave no scope of doubt in respect of their intention of digging the said "Well" in the suit property gat no. 1996/1 & 1996/2. They do admit their intention of constructing "Well". The only short question now remains as to whether it would be prima-facie case in favour of plaintiff no. 3 for the purpose of restraining plaintiff no. 1&2 from constructing such a "Well" in suit property which is joint & undivided and further balance of convenience would be in his favour resulting into irreparable loss to him in case temporary injunction is refused?

7. The first thing to note here that as the plaintiff no. 3 transposed himself in the said capacity therefore, he is admitting the nature of averments and case of plaintiff no.1 & 2 regarding nature of suit property i.e. joint & undivided along with averment of non-partition and cultivation of portion of suit properties by each co-sharer as per their mutual understanding. No doubt unless & until suit properties are partitioned by metes & bound, no one can claim to be in exclusive possession of portion of suit property and till then each portion of property would be regarded as in joint possession of all co-sharer this is what has been held by *Hon'ble Apex Court in case of Jai Singh & Ors. Vs. Gurmej Singh reported in 2009(2) ALL MR 407* relied upon by plaintiff no. 1 & 2. But considering the averment of plaintiff no. 1 & 2 regarding cultivation of portions of suit properties by each co-sharer as per their mutual understanding, it is nowhere specifically contended by plaintiff no. 3 that there has been no such mutual understanding for purpose of cultivation between all co-sharers. It is also not the contention of plaintiff no. 3 that as per said mutual understanding he has been cultivating suit property gat no. 1996/1 & 1996/2. It is also not case of plaintiff no. 3 that plaintiff no. 1 & 2 are not cultivating suit property gat no.

1996/1 & 1996/2 as per mutual understanding between all co-sharers. Though it is true that before partition the possession of all co-sharer is joint one in respect of each & every portion of joint & undivided property but it is equally considerable thing that even in that joint possession there may be mutual understanding between co-sharer regarding cultivation of specific portions of the property which has been observed by Hon'ble Apex Court in case cited (*supra*). So, in case in hand, it is nowhere specifically denied by plaintiff no. 3 that plaintiff no. 1 & 2 have been cultivating suit property gat no. 1996/1 & 1996/2 as per said mutual understanding. Similarly, in present application, it is also not the specific case of plaintiff no. 3 that he has been cultivating suit property gat no. 1996/1 & 1996/2 as per said mutual understanding between all co-sharer.

8. Now, as regard the question of restraining plaintiff no. 1 & 2 from digging and constructing "Well" in suit property gat no. 1996/1 & 1996/2 is concerned, it is require to note that in the present application the plaintiff no. 3 has nowhere contended that there is absolutely no necessity of digging and construction of "Well" in suit property gat no. 1996/1 & 1996/2. He has not either come with case that there are no crops under cultivation of plaintiff no. 1 & 2 in gat no. 1996/1 & 1996/2 nor he has come with case that there is abundant water supply for those crops and therefore there is no necessity of digging and construction of "Well" in said gat no. 1996/1 & 1996/2. On the other hand, each co-sharer is under obligation to maintain the joint & undivided property in proper and good condition before the partition. So, prima-facie it leads to inference that there are crops in gat no. 1996/1 & 1996/2 and further that there is no water supply source in suit property gat no. 1996/1 & 1996/2. Now, another aspect which requires to be considered here is

that whether the probable action of plaintiff no. 1 & 2 of digging and constructing "Well" in suit property gat no. 1996/1 & 1996/2 would result into obstruction, change in nature and damage as alleged by plaintiff no. 3. In this regard, it is to be noted that, plaintiff no. 3 has not specifically described as to how the construction of "Well" would result into obstruction about his enjoyment of suit properties. On the other hand, if, there is situation of scarcity of water then making provision of water supply by construction of "Well" would be a necessity which would be ultimately beneficial to all co-sharers. As regard stand of plaintiff that construction of "Well" will result into change in nature of suit property is concerned, it is not acceptable because there will not be case of change of user or converting the use of suit property for any other purpose which is contradictory to the nature itself of the suit property. As regard the contention of damage to the suit property is concerned, I am unable to agree with this stand for the reason that the word "damage" with connection to landed property implies any kind of deterioration or derangement of the property. Digging and construction of "Well" in agriculture property for the purpose of providing water supply can in no way viewed as damage of the property. On the other hand, it can be viewed as improvement of the agricultural property. No doubt, the plaintiff no. 1 & 2 if necessary, would be required to obtain necessary permission of concerned government department and make necessary compliance for the purpose of constructing "Well" in the suit property. In view of all this discussion, I find nothing which would show prima-facie case in favour of plaintiff no. 3. Accordingly, I record my finding to the point no. 1 in negative.

As to the point no.2

9. The term "balance of convenience" is nothing but comparative

hardship that would be caused in case temporary injunction is granted or not granted. It also implies the magnitude and gravity of inconvenience that would be caused to defendant in case he is enjoined. In case in hand, keeping in view that the nature of suit property gat no. 1996/1 & 1996/2 being joint and undivided properties the comparative hardship and magnitude and gravity of inconvenience is certainly more to the plaintiff no. 1 & 2 than the convenience of plaintiff no.3. This is so because, as held in answer to the point no.1 that prima-facie it has become clear that under mutual understanding the suit property gat no. 1996/1 & 1996/2 are under cultivation of plaintiff no.1 & 2. It prima-facie also become clear that there is crop in gat no. 1996/1 & 1996/2. It also prima-facie clear that there does not exist any water source for those crops. Therefore, under such circumstance, certainly, the plaintiff no. 1 & 2 who might been cultivating these gat numbers would be put to more hardship in case they are restrained from digging and constructing "Well" for purpose of satisfying need of water for crops. Ultimately, if need of water is not managed then not only the plaintiff no.1&2 but also other co-sharer would suffer thereby. Accordingly, I record my finding to the point no. 2 in negative.

As to the point no. 3

10. As regard question of irreparable loss is concerned, keeping in view the discussion in answer to the point no. 1 & 2 above, granting of injunction would result into irreparable loss not only to plaintiff no. 1 & 2 but even to other co-sharers including plaintiff no.3. The suit being for partition, at the time of ultimate allocation of shares and dividing property by metes and bound it would be open at the time of execution to put "Well" portion of suit property gat no. 1996/1 & 1996/2 to the share of plaintiff no. 1 & 2 also. Even, in

case the plaintiff no. 1 & 2 not succeed or even if at time of actual partition for some reasons it would not be feasible to put the “Well” portion of suit properties in the share and allocation of plaintiff no. 1 & 2 then also the co-sharer who would be allocated the said “Well” portion of suit property would get more benefited thereby. So, not only the plaintiff no. 1 & 2 but also other co-sharers including present plaintiff no.3 would be put to irreparable loss in case injunction is granted prohibiting constructing “Well”. Accordingly, I record my finding to the point no. 3 in negative and as answer to the point no. 4 pass the following order :-

Order

1. The application is rejected.
2. Cost of application shall be cost in cause.

Date :- 8-2-2021

Place :- Karad.

3rd Jt. Civil Judge Sr. Division

Karad.