

ORDER BELOW EXH. 5 IN RCS NO. 201/2023

Bajirao Thorat Vs. Aanandrao Thorat.
(CNR- MHST 07011272023)

This is an application filed by plaintiffs under Order 39 Rule 1 and 2 of the Code of Civil Procedure, to grant interim injunction against the defendants that, not to cause any obstruction or interference to their possession over the suit property described in plaint para No. 1B.

2. It is stated in the application that, suit property bearing Gat No. 167 it is joint property of the plaintiffs, defendants and other co-owners. Plaintiffs have 12.19 R land therein of their share. They have constructed house in said land in the year 2016 which is described in plaint para No. 1B and bearing Grampanchayat property No. 1577 admeasuring area 35×29 square feet. Name of plaintiffs were recorded to the said house in the Grampanchayat record by way of their application dated 06/04/2018 and view of resolution No. 10 dated 09/01/2018 of monthly meeting of the Grampanchayat. On 01/12/2018. Plaintiffs have obtained electricity connection to the said house. Necessary property taxes in respect of said house property have been paid by the plaintiffs to the Grampanchayat Ond.

3. It is further stated that, defendant No. 3 has contested Grampanchayat election 2021 against the plaintiff No.

1 in which he was defeated. Therefore, defendant No. 3 is dissatisfied and angered against the plaintiffs. Therefore, defendant No. 3 has made various complaints in respect of mutation of name of plaintiffs to the suit property described in plaint para No. 1B. Defendant no. 1 has given application to the Grampanchayat Ond on 31/12/2018. In view of that application Grampanchayat has asked guidance from the Block Development Officer, Karad on 10/05/2019. Defendant No. 2 again on 10/08/2022 has made a compliant to the Collector, Satara in respect of mutation of name of plaintiffs to the suit property described in plaint para No. 1B. Thereon, the Block Development Officer, (BDO) Karad has asked guidance from the Tahsildar, Karad. In that case Tahsildar has given erroneous guidance to the BDO. According to that guidance the BDO has on 29/12/2022 directed the Grampanchayat Ond to cancelled the mutation entry of Bajirao Shankar Thorat in respect of suit property described in plaint para no. 1B and to registered the name of Aanandrao Aappa Thorat. That proceeding is pending till now. Plaintiffs have made Review application to the Tahsildar, Karad, in respect of his guidance given by him to the BDO. In that Review application Tahsildar, Karad has given legal or proper guidance to the BDO. On the basis of that guidance the BDO has directed to the Grampanchayat Ond to take appropriate action. In respect of mutation of name of plaintiffs to the suit property described in plaint para no. 1B. In this way defendants have by making various complaints to the various

authorities obstructed the possession of plaintiffs over the suit property described in plaint para no. 1B. On 01/03/2023 defendants stated to the plaintiffs that, the said house is their property and threatened then to take forceful possession of the said house. Therefore, plaintiffs have filed present suit for permanent injunction against the defendants. Meanwhile, if the defendants have taken forceful possession or cause obstruction or interference to the possession of plaintiffs, over the suit property described in plaint para no. 1B, it will cause irreparable loss to them. Balance of convenience lies in their favour. Hence, he prayed for interim injunction against defendants.

4. Defendants have filed their say on Exh. 5 at Exh. 19. They have denied all material allegations made against them in the present application. It is specifically contended by the defendants that 10.56 R land out of suit property Gat no. 167 is their ancestral property and they have constructed house in their land in the year 2016 admeasuring area 75.30 square feet. It was farm house constructed to store agricultural products, agricultural utensils etc. Therefore, it was not recorded to the record of Grampanchayat Ond. That house is in the possession of defendants since last 7-8 years as owner thereof. Plaintiff No. 1 is elected member of the Grampanchayat Ond. He has illegally recorded their names to the said house in the record of Grampanchayat. When defendants come to know about this illegality, they have made application to the Block Development

Officer, Tahsildar etc. Inquiry was held on their applications and complaints and name of plaintiffs recorded to the Grampanchayat property No. 1577 was cancelled. Plaintiffs have no concerned with the suit property described in plaint para no. 1B. They are not owner or possessor thereof. Therefore, they have no priam-facie case in their favour. It is further contended that as on 09/04/2018 name of the plaintiffs were not recorded to the revenue record of suit property Gat No. 167. When name of plaintiffs were recorded to the Grampanchayat property No. 1577 they were not owner thereof. For this reason also mutation of names of plaintiffs to the Grampanchayat property No. 1577 is illegal. It is further contended that, defendants have made an application dated 31/12/2018 to the Grampanchayat Ond and prayed for cancellation of names of plaintiffs recorded to the Grampanchayat property No. 1577. Thereafter, on 02/06/2022 they have again made an application to the Grampanchayat to record their names to the house constructed by them in the Gat no. 167 and to cancel the name of plaintiffs from the Grampanchayat record of suit property 1B. That application has been rejected by the Grampanchayat Ond by resolution dated 05/08/2022. Thereon, 08/08/2022 the defendant no. 1 has made an application to the Collector, Satara and the Chief Executive Officer of Zilha Parishad Satara to record his name to the house constructed by him in the suit property Gut No. 167. They have forwarded that application to the Tahsildar, Karad and Block Development Officer, Karad for necessary action.

Inquiry was held in that application and Tahsildar, Karad has given guidance to the Block Development Officer to cancel the mutation of plaintiffs in respect of Grampanchayat property no. 1577 and record the name of defendants to that property. In view of that guidance Block Development Officer has directed to the Grampanchayat Ond to cancel the mutation of plaintiff and to record the mane of defendants to the house property constructed in Gut No. 167. In view of that direction the Grampanchayat Ond have cancelled the name of plaintiffs from the property Gat No. 1577 and record the name of defendant no. 1 in respect of that property by way of Resolution No. 130 dated 10/08/2023. In this way now defendants are owner and possessor of the suit property described in plaint para no. 1B. Plaintiffs have no concerned with the suit property in any manner. They have no prima-facie case in their favour. Balance of convenience is lies in favour of defendants. If interim injunction as prayed for is granted, it will cause irreparable loss to the defendants. Hence, they prayed for rejection of application with cost.

5. Heard Ld. Adv. R.D.Kadam for plaintiffs and Ld. Advocate P.N.Patil for defendants at length. Perused the record. Considering the pleadings, documents on record and submissions of both parties following points arise for my consideration. I have recorded my findings against each of them for the reasons given thereunder as follows: -

Sr. No.	Points	Findings
1.	Do the plaintiffs prove that, they have prima facie case in their favour?	No.
2.	Do the plaintiffs prove that, they will suffer irreparable loss if interim injunction refused?	No.
3.	Do the plaintiffs prove that, balance of convenience lies in their favour?	No.
4.	What Order?	Application is rejected.

REASONS

As to Point Nos. 1 to 4: -

6. In the present suits both parties have claimed ownership and possession over the suit property described in plaint para no. 1B i.e. Grampanchayat property no. 1577. Both parties have claimed that they have constructed house in the suit property Gut No. 167 (herein after referred as “disputed house”). Therefore, basic question fall for consideration in present application that who is the owner and possessor of the suit property described in plaint para no. 1B. In order to prove prima-facie that they are owners and possessor of suit property described in plaint para no. 1B, plaintiffs have relied on the 7/12 extract of Gat No. 167 at Exh. 8, Grampanchayat property extract of Grampanchayat property no. 1577 at Exh. 9, Grampanchayat tax payment receipt, electricity bill, order of

Tahsildar, Karad dated 14/12/2022, order of Block Development Officer, Karad dated 29/12/2022, order of Tahsildar, Karad dated 06/02/2023, order of Block Development Officer, Karad dated 21/02/2023, mutation entry no. 592, mutation entry no. 613, sale deed dated 23/05/2018 executed by Sunil Thorat in favor of plaintiff no. 1 in respect of suit property Gat no. 167, N.C. report dated 24/03/2023, complaint made by plaintiff to the Karad police station dated 24/03/2023, resolution dated 28/03/2023, Grampanchayat property extract of Grampanchayat property no. 1577 of the year 2015-16 to year 2022-23 and affidavits of adjacent owners namely Sambhaji Lalaso Thorat and Dinkar Thorat.

7. Both parties have claimed possession over suit property described in plaint para no. 1B. It is settled legal position that at this stage only factum of possession is relevant and whether said possession is lawful or otherwise cannot be decided at this stage.

8. It is averred by plaintiff that they are owner of 12.19 R land out of suit property Gat No. 167 by way of succession as well as sale deed dated 23.05.2018. On the other hand, defendants contended that plaintiffs are not owner or possessor of suit property in any manner.

9. It is admitted fact that the disputed house is constructed in the suit property 1A i.e. Gat No.167. But both

parties have claimed that they have constructed the disputed house in the year 2016. It is averred by plaintiffs that they have given application dated 06.04.2018 to the Grampanchayat to record their names to Grampanchayat record. Accordingly, their names have been recorded as per resolution No. 10 dated 09.04.2018. On the other hand, defendants contended that plaintiff No. 1 is the member of Grampanchayat and by taking disadvantage of his position he has illegal recorded their names to Grampanchayat record of said house. Defendants have filed their objection in that respect to the Grampanchayat on 31.12.2018 but it was not decided till year 2022.

10. Record prima facie shows that plaintiff No. 1 has made an application to the Grampanchayat to record his name to the house admeasuring 39 X 35 cm constructed in the Gat No.167. Accordingly, name of plaintiff was recorded to the Grampanchayat record by way of resolution No. 10 dated 09.04.2018. Record also shows that defendants have filed an objection to said mutation by way of application dated 31.12.2018. On that application Grampanchayat sought guidance from the BDO Panchayat Samiti Karad by way of letter dated 10.05.2009. But it was not finally decided till year 2022. Record also shows that except application dated 31.12.2018 defendants have not taken any other legal recourse till date 02.06.2022, in respect of Grampanchayat record of disputed house. During that period disputed house was recorded on the

name plaintiffs only.

11. Further, record prima facie shows that defendants have made an application to the Grampanchayat to record their name to the house admeasuring 75 X 30 cm constructed in the Gat No.167. But no action was taken by Grampanchayat in respect of that application. Therefore, defendants have again filed an application to the Grampanchayat calling upon explanation from it as to why his name was not recorded to the Grampanchayat record of said house as per application dated 02.06.2022. Application of defendants was rejected by Grampanchayat by way of Resolution No. 42 dated 05.08.2022.

12. Again, defendants have filed an application dated 14.10.2022 to the Grampanchayat to record his name to the Grampanchayat record to the house admeasuring 75 X 30 cm and cancelled the name of plaintiffs. On that application Grampanchayat has sought guidance from BDO Panchayat Samiti Karad by way of letter dated 19.10.2022. Thereon, BDO has sought guidance from the Tahsildar Karad. Accordingly, Tahsildar has called report of Circle Officer of Undale. Circle Officer has filed his report dated 11.11.2022 with opinion that the plaintiff No.1 has altered the 7/12 extract of Gat No. 167 and written his name thereon and used it to record his name to Grampanchayat record. Accordingly, Tahsildar has given his opinion to the BDO dated 14.12.2022 that as on 09.04.2018 name of plaintiff No.1 was not recorded to 7/12 extract of Gat

No.167, but his name was recorded by way of succession on 06.02.2019 and by way of sale deed dated 05.09.2018. Therefore, Tahsildar has directed to BDO to take necessary action in the matter. Thereon, BDO has by way of order dated 29.12.2022 directed Grampanchayat Ond to take necessary action in the matter according to opinion given by Tahsildar Karad.

13. Thereafter, plaintiff No.1 has again filed a Review Application before Tahsildar Karad against his opinion dated 14.12.2022. In said application Tahsildar has given further direction by way of order dated 06.02.2023 that if there is consent of all heirs of deceased Shankar then claim of plaintiff may be consider. On the basis of said opinion BDO has again directed to Grampanchayat to re-consider claim of both parties and take necessary action as per Maharashtra Grampanchayat Rules 1960. Thereafter, Grampanchayat Ond by way of Resolution No. 130 dated 10.03.2023 deleted the name of plaintiffs from the Grampanchayat record of suit property 1B and recorded the name of defendant to the house admeasuring area 836 sq. ft. at ground level and 886 sq. ft. at first floor.

14. Considering all above discussion, it prima facie revealed that, plaintiff No. 1 was become co-sharer/owner of suit property Gat No.167 by way of mutation entry No. 592 dated 05.09.2018 and mutation entry No. 613 dated 06.02.2019. That means his name was not recorded to suit

property Gat No.167 when their names were recorded to the suit property 1B by Grampanchayat on 09.04.2018. It prima facie shows that plaintiff No.1 was not the owner or co-owner of Gat No.167 when he has filed an application to the Grampanchayat to record his name to the house property constructed in the Gat No.167 or when his name was recorded by Grampanchayat to the suit property 1B. Plaintiffs have suppressed this material fact from this court. It shows that plaintiffs did not come with clean hand in the court to seek equitable relief of interim injunction. As the plaintiff was not the owner or co-owner of Gat No.167 recording of his name by Grampanchayat to the house constructed in that property is prima facie illegal.

15. There is no documentary evidence placed on record by plaintiffs to show that they have constructed disputed house in the Gat No. 167 in the year 2016. Plaintiffs have filed affidavits of two witnesses to show prima facie that disputed house is in their possession. To counter that defendants have filed affidavits of other two witnesses to prove prima facie that said house is in possession of defendants. These witnesses are deposing contrary facts of each other; therefore, their depositions cannot be relied upon at this stage and without their cross examinations.

16. Further, plaintiffs have placed on record electricity bill of electricity connection of said house. But defendants have filed on record letter of MSEB perusal of which shows that

though there is electric connection on the name of plaintiffs, but actual electric supply does not give to that connection. It shows that there is no electric supply to the disputed house. Therefore, said electric bill is not helpful to plaintiff to prove prima facie his possession over said house.

17. On perusal of 7/12 extract of Gat No.167 it prima facie appears that 10.16 R land in said Gat number is now owned by plaintiff No.1 and his brothers by way of succession and 2.03 R land in said property is owned by plaintiff No.1 by way of sale deed dated 23.05.2018. But it would not be helpful to plaintiffs to prove prima facie that they have constructed disputed house and they are possessor of it since year 2016.

18. From the above all discussion, I come to the conclusion that there is no prima facie evidence on record which would show that plaintiffs have constructed disputed house in the Gat No. 167 in the year 2016 and they are possessor thereof since then. Hence, plaintiffs have no prima facie case in their favour. Therefore, no irreparable loss will be caused to the plaintiffs if the present application rejected. Considering material on record balance of convenience is lies in favour of defendants. Therefore, plaintiffs are not entitled for interim injunction against defendants as prayed in respect of suit property 1B. Hence, I answered point Nos. 1 to 3 in the negative and in answer to the issue No.4 I proceed to pass the following order: -

ORDER

1. The application Exh. 5 is rejected.
2. Parties to bear their own costs.

(Dictated and pronounce in open court.)

Date:- 15-04-2023

(M.V.Bhagwat)
5th Jt. Civil Judge (J.D.), Karad