

MHST080007192024

REGULAR CIVIL SUIT NO.160/2024**Raju Narayan Bhargude and Ors.****V/s.****Smt. Hirabai Dnyanoba Bhargude and Ors.****ORDER BELOW EXH.5**

The present application is filed by plaintiffs for relief of temporary injunction against the defendants so as to restrained them from creating disturbance to the possession of suit property.

Factual Matrix Of Plaintiff's Case:-

02. The land bearing Gat No.1524, admeasuring 0H 13R situated at Mouje Palashi, Tal. Khandala, Dist. Satara, is the subject matter of present application as well as main suit. It is further stated by the plaintiffs that, Gat No.1525 admeasuring 0H 35R is in possession and under ownership of plaintiffs and Gat No.1524 admeasuring 0H 67R is in the name of defendant Nos.1 to 3 as per records of rights of said properties. It is also contended by the plaintiffs that, old survey number before consolidation scheme of Gat No.1524 was 267/7 and 127/8 and old survey number of Gat No.1525 was 267/6. As per averments of plaintiffs, the possession of Gat No.1524 is not at all transferred in favour of defendants and suit property i.e. 13R area of said Gat No.1524 is in the possession of plaintiffs. The defendant Nos.1 to 3 applied for urgent measurement of Gat No.1524 which was carried out on 15.05.2024. After perusal of said measurement map, plaintiffs came to know that said suit property i.e. 13R property is not described in the possession of plaintiffs as per said map. Therefore, plaintiffs sent

legal notice to defendant Nos.1 to 3 so as to restrained them from creating any disturbance to the suit property i.e. 13R area in Gat No.1524. However, the defendants illegally obstructed possession of plaintiffs over suit property and constructed cement poles surrounding suit property. Afterwards, the plaintiffs came to know that, defendant Nos.1 to 3 transfer their rights in suit property in favour of defendant Nos.6 to 10 vide registered sale-deed dated 03.04.2024. However, possession of suit property is with the plaintiffs and is not at all transfer in favour of said defendants. Therefore, plaintiffs constrained to file present application so as to restrain defendant Nos.1 to 3 and 6 to 10 from disturbing peaceful possession of plaintiffs over suit property i.e. said 13R area in Gat No.1524.

03. Defendant Nos.1 to 3 and 6 to 10 filed their written statement at Exh.55 and contended that suit property is wrongly described and it is not the part of Gat No.1525. They claimed that suit property is ancestral property of defendant Nos.1 to 3 and Gat No.1525 is owned and possessed by plaintiffs since many years. The plaintiffs are not at all concern with said Gat No.1524 of defendant Nos.1 to 3 and also suit property i.e. Gat No.13R property is described by the plaintiffs. They also claimed their possession in suit property. It is also submitted by the defendants that they fenced suit property i.e. entire Gat No.1524 with cement poles after legal measurement and plaintiffs have no right to way in said Gat No.1524 as well as suit property. Hence, they prayed for rejection of present application.

04. I have heard arguments of learned advocates of both the parties at length. After perusal of documents on record and rival

arguments of both the parties, following points arose for my determination and my reasoned findings to them are as follows:-

Sr. No.	Points for determination	Findings
1	Whether plaintiffs proves that there is prima facie case in their favour ?	No
2	Whether balance of convenience tilts in favour of plaintiffs ?	No
3	Whether irreparable loss would cause to the plaintiffs if the relief of temporary injunction is rejected in their favour?	No
4	What Order?	Application is rejected.

REASONS

05. In order to buttress their contentions, plaintiffs have relied upon 7/12 extract of Gat No.1525 and Gat No.1524, measurement map dated 15.05.2024 regarding Gat No.1524, legal notice sent to defendant Nos.1 to 3 and their acknowledgment receipts, 7/12 extract of survey No.267/6A, 267/6B and 267/7, photographs and index to extract of sale-deed executed by defendant Nos.1 to 3 in favour of defendant Nos.6 to 10.

06. On the other hand, defendant Nos.1 to 3 filed on record one old sale-deed dated 31.12.2008 and reverse sale-deed dated 21.03.2024, intimation regarding disposal of measurement application dated 12.06.2024 and Gat Scheme extract of person named Dhondi Vitu Bhargude. They further relied upon ruling of Hon'ble Bombay High

Court in case of **Prabhakar Kushaba Hagwane and Others V/s. Yashwant Bhau Hagwane and Others; 1993(2) Mh.L.J. 1291**, in which it was held that, *'Plaintiff had entered into possession was on of fact. Scheme under Section 20 of the Act is complete as soon as possession is delivered. Issuance of transfer certificate was a matter of procedure and only an evidence of the transfer which had already taken place. Vesting of title in the consolidation of holdings did not depend upon the grant of certificate of transfer. Plaintiff had become owner of the property even before issuance of certificate under Section 24 of the Act.'*

As To Point No.1 to 3:-

07. Provisions of Order XXXIX Rule 1 of the Code of Civil Procedure provide that temporary injunction may be granted, if in any suit it is proved by affidavit or otherwise (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or (b) that the defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors, or c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act until the disposal of the suit or until further orders.

08. It is now well settled that the party seeking temporary injunction has to satisfy the triple requirements of prima facie case, balance of convenience and irreparable loss. In case of ***Mandali Ranganna and Ors. V/s. T. Ramachandra and Ors., AIR 2008 SC 2291***, the Hon'ble Supreme Court held that *"while considering an application for grant of injunction, the Court will not only take into consideration*

the basic elements in relation thereto, i.e. existence of prima facie case, balance of convenience and irreparable injury, it must be also take into consideration the conduct of the parties. Grant of injunction is an equitable relief. Grant or refusal of injunction has serious consequences depending upon the nature thereof”.

09. Prima facie case does not mean that the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima facie case means that the contentions which the plaintiff is raising, require consideration on merit and are not liable to be rejected summarily. In the backdrop of above discussion, facts of the present case are required to be analyzed thoroughly.

10. In the present case, the plaintiffs have come up with the case that they are in possession of suit property i.e. 13R area of Gat No.1524, whereas the entire Gat No.1524 was in the name of defendant Nos.1 to 3 in the records of rights which was admitted fact by plaintiffs themselves. Moreover, the plaintiffs admitted their possession over Gat No.1525 which is also undisputed fact. The transfer of entire Gat No.1524 in favour of defendant Nos.6 to 10 by the defendant Nos.1 to 3 is also admitted fact and defendant Nos.1 to 3 claimed that said transaction was carried out by them for satisfying their financial needs. The main crux of matter is measurement map dated 15.05.2024 in which the reason for measurement is mentioned as determination of boundaries of Gat No.1524 and the defendant No.2 was applied for said measurement. After perusal of said measurement map, it appears that, determination of boundaries of Gat No.1524 was mentioned in the same and there is no encroachment over it by the defendants. As far as disturbance to the suit property i.e. 13R area of Gat No.1524 is

concerned, there is no documentary proofs filed on record by the plaintiffs so as to establish fact of actual encroachment or hindrance to the alleged possession of them over it except some photographs filed on record. As far as relief of temporary injunction is concerned, the plaintiffs have to prove their settled possession over suit property. However, in the present case, said fact of possession over suit property is not prima-facie established by the plaintiffs. Mere photographs did not suffice the purpose. As per the contentions of the defendants, the Gat No.1524 is their ancestral property and they executed sale-deed regarding same in favour of defendant Nos.6 to 10 so as to satisfy their financial needs. According to them, the suit property is now in possession of defendant Nos.6 to 10 and plaintiffs are not at all concerned with the same.

11. In case of grant of temporary injunction, the Court cannot act mechanically but to evaluate judicially. The triple requirements such as prima-facie case, balance of inconvenience and irreparable loss are required to be satisfied by the plaintiffs. In order to grant relief of temporary injunction which is discretionary and equitable relief, the Court must have to act judicially by considering facts and circumstances of each case.

12. At this juncture, the plaintiffs failed to establish prima facie case against defendants. The relief of injunction which is equitable and discretionary, cannot be granted mechanically when it appears from the record that prima facie case is not in favour of the plaintiffs. So as to balance of convenience is concerned, it is also not in favour of plaintiffs and no irreparable loss caused to them if the relief of temporary

Exh.5

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injunction is not granted. Therefore, I answered point No.1 to 3 in negative and in answering point No.4, following order is passed :

ORDER

The application at Exh.5 for temporary injunction is rejected.

Date: 04.08.2025.
Khandala.

(Smt. S. G. Kuvalekar)
Civil Judge Junior Division
Khandala