

MHST130006722023 	R.C.S. No. 258/2023 Sharadabai Pandurang Shedge & others Vs Vishwas Tanaji Shedge & Others
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ORDER BELOW EXH.05

The plaintiffs filed this application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure seeking a temporary injunction restraining the defendants from entering upon the suit property described in Dava Kalam 1-B, from dumping cattle dung, from making any construction, from disturbing the plaintiffs' peaceful possession and enjoyment of the suit land, and from dispossessing the plaintiffs during the pendency of the suit.

2. The plaintiffs contend that Gat No. 906 originally belonged to their predecessor Pandurang Ganpati Shedge, who died on 08/11/2010, and upon whose death their names came to be mutated vide Mutation Entry No. 1023. It is their case that the land was partitioned among co-sharers, and the portion described as Dava Kalam 1-B has come to their share and is in their peaceful possession and enjoyment. They allege that in January 2022, the defendant, taking advantage of Plaintiff No. 1 being a widow and Plaintiff No. 2 working outside the village, attempted to excavate a portion of the suit land using a JCB without any right or authority, and attempted to dump cattle dung there. A complaint was made to the Village Dispute Committee, and upon intervention of the villagers, the defendant allegedly admitted the mistake and restored possession. It is further contended that in February 2023, the defendant again attempted to enter the suit land and threatened to forcibly dump cattle dung and

dispossess the plaintiffs. The plaintiffs apprehend that the defendant, being influential and resourceful, will dispossess them and erect construction to their irreparable loss. They contend that they have a prima facie case, that the balance of convenience lies in their favour, and that irreparable injury will be caused if the injunction is refused.

3. The defendants have filed their reply opposing the application. They deny the plaintiffs' description of Dava Kalam 1-A and 1-B and contend that the plaintiffs have deliberately shown incorrect boundaries and excess area. It is their case that Gat No. 906 is a larger land comprising multiple sharers and that the plaintiffs are entitled only to a limited area, which is far less than stated by them. They contend that their own lands bearing Gat Nos. 885 and 888 lie to the south of Gat No. 906, and they have been using their own land for keeping cattle dung and also have a gohar gas unit therein. They further contend that in January 2022, when the plaintiffs complained of alleged encroachment, both parties agreed before the Village Dispute Committee to get the land surveyed. The survey was conducted on 06/12/2022 on the application of Plaintiff No. 1. The defendants rely heavily on the said official survey report (M.R. No. 3583/2022) prepared by the TILR, which, according to them, shows that the plaintiffs themselves had encroached into neighbouring Gat Nos. 865, 866, 885, 888 and 889. It is pointed out that because the plaintiffs objected during the subsequent attempt to measure the defendants' land, the TILR officer stopped the measurement and advised the defendants to seek a court-commissioned measurement. The defendants submit that the plaintiffs have suppressed these material facts and therefore have not approached the Court with clean hands. They further

allege that the plaintiffs are now attempting to put up construction forcibly in the disputed portion despite the pendency of proceedings and despite the boundary dispute being unresolved. According to them, the plaintiffs are not in exclusive possession of the portion claimed; that the defendants are in possession of their own land only; that the plaintiffs have no prima facie case; and that the balance of convenience lies in favour of the defendants, as granting an injunction will prevent them from using their own land.

4. In view of the pleadings and the documents placed on record, the following points arise for determination:

Sr. No	Points	Findings
1.	Whether the plaintiffs make out a prima facie case for the grant of a temporary injunction?	No.
2.	Whether the balance of convenience lie in favour of the plaintiffs?	No
3.	Whether the plaintiffs will suffer irreparable loss and injury if the injunction is refused?	No
4.	What order?	As per the Final order.

REASONS

As to point No.1:-

5. As regards the prima facie case, the plaintiffs rely primarily on the 7/12 extract and Mutation Entry No. 1023 to assert their title as

co-holders of Gat No. 906 after the death of their predecessor, Pandurang Ganpati Shedge. Their status as co-owners of the entire Gat No. 906 is not in dispute. However, the claim they press in the present proceedings is not a general assertion of ownership over the entire gat, but a specific assertion of exclusive possession over a defined portion described by them as Dava Kalam 1-B. To succeed at this stage, it is incumbent upon the plaintiffs to demonstrate that this specific portion is clearly identifiable, falls unequivocally within Gat No. 906, and is in their settled possession.

6. On perusal of the material produced, it becomes apparent that the plaintiffs have not placed on record any official document evidencing a partition by metes and bounds or any sanctioned subdivision of Gat No. 906 allocating the particular parcel described as Dava Kalam 1-B to them. The boundaries shown in their map are self-drawn and are unsupported by any certified survey sketch, measurement sheet, or plan prepared by an authorised revenue surveyor. This lack of authoritative demarcation becomes significant when contrasted with the official survey conducted by the TILR on 06/12/2022, which was undertaken at the request of Plaintiff No. 1 herself. The findings recorded in this survey indicate a mismatch between the record boundaries of Gat No. 906 and the boundaries asserted by the plaintiffs during the survey. The TILR report notes that the plaintiffs were found to be in possession beyond the recorded limits of Gat No. 906 in the direction of neighbouring Gat Nos. 865, 866, 885, 888 and 889. This official discrepancy directly affects the plaintiffs' assertion that the exact portion they claim as Dava Kalam 1-B falls entirely within their legally recorded holding.

7. The existence of such an officially documented boundary inconsistency weakens the plaintiffs' prima facie case because it raises doubt not merely about minor boundary variation, but about the fundamental question of whether the disputed area lies within Gat No. 906 at all. The plaintiffs have not produced any counter-survey, expert opinion, or measurement to contest or clarify the TILR's findings. Further, the plaintiffs did not disclose the detailed contents of this official survey in their application, although it was conducted upon their own application. The suppression of this material circumstance is relevant when evaluating whether their claim is sufficiently credible to justify interim protection.

8. The defendants, for their part, do not dispute that the plaintiffs are co-holders of Gat No. 906, but they dispute the plaintiffs' identification of the portion claimed. They rely upon the official measurement report to show that the boundaries of Gat No. 906, as per the revenue record, do not correspond with the area the plaintiffs seek to protect. In a situation where the identity of the suit property itself is in serious doubt and when the only authoritative document, the TILR report, casts uncertainty on the plaintiffs' version, the plaintiffs cannot be said to have demonstrated a strong prima facie entitlement.

9. At this stage, the Court is not required to resolve the boundary dispute conclusively but must assess whether the plaintiffs have shown a credible, clearly identifiable right to the specific portion for which they seek an injunction. In the absence of any formally recognised demarcation of Dava Kalam 1-B, the plaintiffs' reliance on an unverified sketch, and the presence of an official survey contradicting

their claimed boundaries, the plaintiffs fail to make out a prima facie case that the disputed portion lies within their lawful possession. Hence, I answer this point negatively.

As to point No.2:-

10. As regards the balance of convenience, the plaintiffs have not shown that the defendants are attempting to interfere in a clearly established area belonging to and possessed by them. The defendants have shown that they have been using their own land adjoining Gat No. 906 for cattle dung purposes. The plaintiffs' case that the defendants attempted to dump dung in their land remains unverified in view of the disputed boundaries. If an injunction is granted restraining the defendants from using an area that may, in fact, fall within their own land or within a disputed strip pending measurement, the defendants will suffer greater irreparable loss. On the other hand, if the injunction is refused, the plaintiffs can still seek a court-appointed survey commission under Order XXVI Rule 9 CPC to establish the boundaries and possession conclusively at trial. Therefore, the balance of convenience does not lie in favour of granting the injunction. Hence, I answer this point negatively.

As to point No.3:-

11. With respect to irreparable injury, the plaintiffs have not demonstrated that refusal of a temporary injunction will result in a harm of such a nature that it cannot be adequately compensated or rectified at a later stage. The foundation of irreparable injury lies in the existence of a clearly established and identifiable possession which, if disturbed, would cause loss that cannot be measured in monetary terms

or restored through future orders of the Court. In the present case, the very identity and boundaries of the portion described as Dava Kalam 1-B are in dispute, and the plaintiffs have not produced any authoritative or revenue-certified demarcation to show that the exact area from which they apprehend dispossession is conclusively within their share of Gat No. 906. The official TILR measurement obtained at the instance of Plaintiff No. 1 casts doubt on the plaintiffs' claim of possession over the precise area, and indicates discrepancies between the record boundary and the boundaries asserted by them. In such circumstances, the Court cannot assume settled possession merely on the basis of a hand-drawn map or unilateral description.

12. Where possession itself is uncertain or overlaps into neighbouring lands, the law does not treat apprehended disturbance as irreparable injury, because such apprehension can be addressed and remedied once boundaries are properly established through a competent survey or a court-appointed commissioner. If, upon such determination at trial, it is ultimately found that the defendants have encroached or interfered with land belonging to the plaintiffs, appropriate mandatory directions, restoration, or possessory reliefs can be granted. Thus, the injury apprehended by the plaintiffs is neither irreparable nor incapable of correction by subsequent orders. Conversely, granting an injunction on an imprecise claim of possession may restrain the defendants from using land which, *prima facie*, may fall within their own boundary, thereby causing an imbalance of equity. In this context, the plaintiffs have failed to satisfy the requirement of establishing irreparable injury for the purpose of obtaining an interim injunction. Hence, I answer this point negatively.

As to point No.4:-

13. Considering all the above circumstances, the plaintiffs have failed to establish the three essential ingredients required for the grant of a temporary injunction. The disputed boundaries, the official survey report contradicting the plaintiffs' version, the absence of an authoritative partition, and the plaintiffs' reliance upon a self-created map collectively disentitle them from the discretionary equitable relief sought at this stage. Hence, I pass the following order.

ORDER

1. The application is therefore rejected.
2. No order as to costs.

Patan.
Date : 12/12/2025

(R. M. Lolge)
Civil Judge, Junior Division,
Patan.