

REGULAR CIVIL SUIT NO.255/2022
CNR No.MHST180004472022
Suhas Dabhade-1 Vs. Chandrakant Dabhade

ORDER BELOW EXH.5

The application is filed under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure for temporary injunction against defendant no.1 and 2 in respect of land Gat No.41/3 admeasuring 2 R out of total area of 6 R situated at village Aundh Tal.Khatav Dist.Satara (hereinafter referred as the "suit property).

02. It is the contention of plaintiff that the suit property their ancestral property. Grandfather of plaintiffs namely Laxman Jayram Dabhade has got fixed the boundaries of suit property vide MR No.33 dt.25/1/1976, MR No.241 and 242 dt.24/8/1976. After death of Laxman Dabhade, the name of plaintiff's father namely Vinayak Laxman Dabhade was mutated over the suit property. Vinayak Laxman Dabhade mutated the names of plaintiffs over the suit property by filling application for mutation entry no.6289. It is their contention that though, their names were mutated over the 7/12 extract of the suit property but, there is no partition between plaintiffs and defendant no.1 to 4 by metes and bounds. The plaintiffs and defendants are cultivating land in Gat No.41/3 admeasuring 6 R as per their convenience. It is their contention that defendant no.1 and 2 have illegally started construction at prime location in the land Gat No.41/3. The plaintiffs have requested defendants not to carry on construction till partition by metes and bounds, at that time the defendant no.1 and 2 have refused

their request and threatened to continue the construction over the land Gat No.41/3. On 11/7/2022, the plaintiffs have again asked for partition to the defendants but they have refused their request and continued illegal construction over the land Gat No.41/3. Hence, they have constrained to file present suit and prayed for temporary injunction against the defendant no. 1 and 2 as claimed in present application.

03. The defendant no.1 and 2 have appeared and filed their say cum written statement at Exh.16. They have resisted the suit claim in toto. They have come with the case that land Gat No.41/3 was ancestral property of Maruti Jayram Dabhade, Laxman Jayram Dabhade and Dnyaneshwar Dabhade who were ancestors of plaintiffs and defendants. In the year 1969, on the occasion of *Chaitra Gudhi Padwa*, Maruti, Laxman and Dnyandeshwar have effected oral partition in respect of land Gat No.41/3 between them and since then they were in separate possession of their respective shares. In the year 1965 Maruti had constructed house in the said property which has been allotted to him in oral partition of year 1969. After death of Maruti, defendant No. 1 and 2 have become owner and possessor of the share of Maruti. It is their contention that as per oral partition, the defendant no.1 and 2 have received Eastern side portion to their share. Whereas, defendant no.3 and 4 have received South–West portion to their share. The plaintiffs have received middle portion of Western side and they have kept portion of South–West side near the road in common between them. The house constructed by Maruti has been mutated in the name

of father of defendant no.1 and 2 in the year 1972 vide Grampanchayat property no.795. After that, the said house number was changed and now the said house number is 1037 and 1107. The defendant no.1 and 2 are in possession of house no.1037 from the year 1965 and the plaintiffs have no concern with the said house. Now, the defendant no.1 and 2 have started RCC construction by demolishing their old house. The suit is false and filed with ill-intention to harass these defendants. The defendant no.1 and 2 have spent near about RS.10,00,000/- for construction of their new house. The defendants have no alternate house for their residence except the newly constructed house. The construction is almost completed. Therefore, application is not tenable in the eye of law. The suit is barred by limitation. Lastly, prayed that application be rejected with cost.

04. Considering the rival pleadings of both the parties, following points arise for my determination along with my findings thereon for the reasons stated herein below :-

Sr. No.	POINTS	FINDINGS
1	Does the plaintiff prove that he is having prima-facie case ?	Partly yes.
2	Does the plaintiff prove that balance of convenience lies in his favour ?	Partly yes.
3	Does the plaintiff prove that he will suffer irreparable loss, if the temporary injunction is not granted in his favour ?	Partly yes.
4	What order ?	As per final order

REASONS

AS TO POINT Nos. 1 to 3 :-

05. Learned Advocate Shri. Budhavale for the plaintiffs has submitted that the names of plaintiffs are mutated over land Gat No. 41/3 admeasuring 2 R i.e. the suit property, but there is no partition between plaintiffs and defendants by metes and bounds in respect of land Gat No. 41/3 admeasuring 6 R. Now, the defendant No. 1 and 2 are causing obstruction to the possession of the plaintiffs over the suit property. The defendant no.1 and 2 are trying to change the nature of the suit property by carrying illegal construction over it without effecting partition by metes and bounds. He has further submitted that plaintiffs are owner and possessor of 2 R land out of Gat No.41/3 i.e. suit property. It shows that plaintiffs are having prima facie case in their favour. The balance of convenience lies in favour of plaintiffs. If defendant no.1 is not restrained from causing obstruction to possession and not restrained from carrying illegal construction over the suit property by way of granting temporary injunction, then plaintiffs will suffer irreparable loss which cannot be compensated in terms of money. Lastly, prayed that application be allowed.

06. On the contrary, learned Advocate Shri. Jamdhade for defendant no.1 and 2 has submitted that in the year 1965, the ancestor of the defendants namely Maruti has constructed house in land Gat No. 41/3 and after death of Maruti, the defendants were and are in possession of the said house. The defendant no.1 and 2 are carrying RCC construction by demolishing the said old house for their residence.

They have started the construction work of 25 x 26 sq.ft before two months of filing of suit. The construction work is almost completed. The plaintiffs have not filed suit with clean hands. The plaintiffs have no prima face case in their favour. The balance of convenience lies in favour of defendants as they have made huge investment for construction of their RCC house. If injunction is granted then defendant no.1 and 2 would suffer irreparable loss which cannot be compensated in terms of money. Lastly, prayed that application be rejected with cost.

07. Considering the rival submissions, in order to decide this application, it is required to be seen whether the plaintiffs are having prima facie case in their favour or not? According to plaintiffs, they are owner and possessor of 2 R land in Gat No.41/3 i.e. suit property. Plaintiffs have filed 7x12 extract, mutation entry no.6279, copies of order of Tahasildar dt.15/1/2014 and 8/3/2022. The plaintiffs have also relied upon photographs of the alleged construction.

08. On the contrary, according to defendants, they are carrying construction by demolishing their old house which they have received in oral partition in the year 1969. Defendant No. 1 and 2 have relied upon 8A extract of Gram panchayat no.1037 and 1107 from the year 2000 to 2022. The defendant No. 1 and 2 have also relied upon photographs of alleged construction.

09. Considering rival submissions and documents produced by both parties on record, it shows that the plaintiffs have come with the case that there is no partition between them by metes and bounds. On the contrary, the defendant no.1 and 2 have come with the case that

there was oral partition between Maruti, Laxman and Dnyaneshwar in the year 1969. At the same time, defendant No. 1 and 2 have come with the case that in the year 1965, Maruti has constructed house in land Gat No.41/3 and as per oral partition, the said house has been allotted to the share of Maruti.

10. In order to prove the theory of oral partition, the defendant no. 1 and 2 have relied upon 8A extract of Gat No.1107 for the year 2002 to 2022. On perusal of said 8 A extract, it shows that the name of Hanmant Maruti Dabhade is mutated in ownership column of the Grampanchayat property no.1037 and 1107. The description of the Grampanchayat Property No.1037 and 1107 shown as dilapidated house (पडीक घर जागा) for the year 2001 to 2016 and description shown as open space, *Chhapar khan 5* for the year 2016 to 2022. This fact prima facie shows that house no.1107 is in the name of Hanmant Maruti Dabhade and it was a dilapidated house since the year 2001 to 2016.

11. It is well settled that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. It is settled law that entries in the revenue records or jamabandi have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. In such situation, 8 A extract filed by the defendant No. 1 and 2, in respect of G.P.No. 1037 and 1107 are not sufficient to prove the oral partition between Maruti, Laxman and Dnyaneshwar as alleged by the defendant No.1 and 2.

12. The initial burden to prove the alleged oral partition lies

upon the defendant No. 1 and 2. At this stage, there is nothing on record except bare words of defendant No.1 and 2 to show that there was oral partition between Maruti, Laxman and Dnyaneshwar in the year 1969 in respect of Gat No.41/3 and the house has been allotted to Maruti in the said partition. In such situation, whether the oral partition between plaintiffs and defendants in respect of Gat No.41/3 as alleged by defendant No.1 and 2 was effected or not? This is the moot question arise in this suit and this issue is required to be decided after evidence of both parties.

13. The plaintiffs have claimed two relief in this application. So far as the first relief is concern that, the defendant no. 1 and 2 be temporarily restrained from causing obstruction to their possession over the suit property. On perusal of 7x12 extract of Gat no. 41/3, it shows the names of plaintiffs and defendants to the extent of areas shown before their names respectively. At this stage, there is nothing on record to show that there was oral partition between plaintiffs and defendants in respect of land Gat No.41/3 as claimed by the defendant No. 1 and 2 in their written statement. On the contrary, prima facie it shows that the plaintiffs and defendants are in joint possession of the land Gat No.41/3 admeasuring 6 R. The defendant no. 1 and 2 have denied the ownership and possession of the plaintiffs in their written statement in para no.7. It shows that the plaintiffs are having prima facie case in their favour in respect of causing obstruction to their possession. The balance of convenience lies in favour of the plaintiffs in respect of causing obstruction to their possession. If defendant No. 1 and 2 are not

restrained from causing any sort of obstruction to the possession of plaintiffs over the suit property then the plaintiffs will suffer irreparable loss as compared to the defendants. Therefore, the plaintiffs are entitled for relief that defendant no. 1 and 2 be temporarily restrained from causing obstruction to their possession over the suit property.

14. So far as second relief that the defendant no. 1 and 2 be temporarily restrained from carrying construction over the suit property, is concerned. The defendant no. 1 and 2 have not disputed the fact that they are carrying construction in the land Gat No.41/3. According to them, the construction work is started prior to two months and the construction is almost completed. For that the defendants have relied upon the photographs produced along with list Exh.19 and 21. On perusal of said photographs, it shows that construction of first floor is at the verge of completion. It is not the case of the plaintiffs that the defendant no.1 and 2 are carrying construction beyond the share which might the defendant no.1 and 2 receive after partition. It shows that the plaintiffs have kept mum when the defendant no.1 and 2 have started the construction. It also shows that the suit is filed when the construction is at the verge of completion. It shows that plaintiffs have no prima facie case in respect of restraining construction work of defendant no.1 and 2. The balance of convenience in respect of carrying construction lies in favour of defendant no. 1 and 2. The irreparable loss is concerned, the defendant no. 1 and 2 have made investment of near about Rs.10,00,000/- for the construction of alleged house in the suit property and the construction is almost completed. In such situation, if

injunction restraining defendants from carrying construction is granted then the defendants will suffer irreparable loss as compared to the plaintiffs. Therefore, the plaintiffs are not entitled for second relief as claimed above.

15. Considering above discussion, I answer point no.1 to 3 in the partly affirmative. Hence, I pass following order in answer to point no.4 :-

ORDER

- 1) The application Exh.5 is partly allowed.
- 2) Defendant no.1 and 2 are hereby temporarily restrained from causing any sort of obstruction to the possession of plaintiffs over the suit property till final decision of the suit.
- 3) Costs in the main cause.

Vaduj
Dt. 3rd August, 2022

(Manoj C. Nepte)
Jt. Civil Judge Senior Division, Vaduj