

MHWR050004132015

**Order below Exh. 64.
(Passed on 07.10.2023)**

By this application under Order 39 Rule 1 (c) of the Code of Civil Procedure, the plaintiff seeks temporary injunction restraining defendant no.4 from causing obstruction or interference in his possession over field survey no. 92 admeasuring 1 Hectare 13 Are situated at mouza Khairgaon, Tah. Samudrapur, Dist. Wardha (here-in-after referred to as 'the suit field').

2. The plaintiff has submitted that in the year 2007 his son Yashpal was severely ill. Therefore, he was in need of money. One Arade and Hepat took him to defendant no.1 who express his willingness to give loan of Rs.15,000/- on condition of signing some documents. As the plaintiff was in dire need of money, he agreed thereto. Defendant no.1 give Rs.5000/- to him and took him to Tahsil Office Samudrapur and obtained his signature on some documents. After the execution of the documents defendant no.1 gave Rs.8,000/- to the plaintiff. When the plaintiff asked him about the remaining amount, he said that Rs.2,000/- has been deducted towards interest. The plaintiff is an illiterate. Moreover, the contents of the documents were not apprised to the plaintiff. Further, the plaintiff has been regularly paying the money to defendant no.1.

In January 2015, defendant no.3 came to the suit field and tried to take possession thereof. When defendant no.3 was obstructed, he stated that he has purchased the field from defendant no.2. Thereafter, the plaintiff obtained copies from the Sub-registrar office

and came to know that defendant no.1 has fraudulently got executed registered power of attorney in his favour and on the basis thereof executed sale deed of the suit field in the year 2008 in favour of defendant no.2. Moreover, in the year 2012 defendant no.2 executed sale deed in favour of defendant no.3. However, since the initial document, that is, power of attorney executed in favour of defendant no.1 is void, the subsequent documents (sale deeds) are also void.

Moreover, during the pendency of the suit, that is, on 02.02.2019, defendant no.3 executed sale deed of the suit field in favour of defendant no.4. Accordingly, he has been impleaded in the suit. However, on 22.11.2022, defendant no.4 came to the suit field and caused obstruction in the possession of the plaintiff over the suit field. Therefore, on 22.11.2022 itself the plaintiff lodged report against defendant no.4 with police station Samudraupur, but in vain. Therefore, the plaintiff has been constrained to file the present application.

3. Defendant no.1 has contested the application vide his reply (Exh.72). He has denied all the allegations adverse to him. He has specifically submitted that on 17.07.2007, the plaintiff has executed power of attorney in his favour and also possession receipt handing over the possession to defendant no.1. Moreover, the plaintiff has filed application (Exh.5) for temporary injunction seeking to restrain defendant no.1 to 3 for causing obstruction and interference in his possession over the suit field. However, the said application has been rejected on 03.08.2016. Therefore, the present application is not maintainable in law. On these premises, it is submitted that the application may be rejected.

4. Defendant no.4 has failed to file his reply. Hence, the application is proceeded without his reply.

5. From the rival pleadings of the plaintiff and defendant no.1 following points arrive for determination. I have recorded my findings thereto for reasons to follow :-

Sr.	POINTS	FINDINGS
1.	Does the plaintiff prove that he has prima facie case ?	...No.
2.	Does the plaintiff prove that he would suffer irreparable loss if temporary injunction is refused ?	...No.
3.	Does the plaintiff prove that the balance of convenience lies in his favour ?	...No.
4.	What order ?	As per final order.

REASONS

As to point no. 1 to 3 :-

6. It must be noted that the plaintiff has filed the application claiming himself to be in possession of suit field and restraining defendant no.4 from causing obstruction and interference in his alleged possession over the suit field. There is no dispute that the plaintiff has earlier filed an application (Exh.5) for temporary injunction claiming to be in possession of the suit field and seeking to restrain defendant no.1 to 3 from causing obstruction and interference in the alleged possession over the suit field. The said application was decided on 03.08.2016 wherein a specific finding was recorded that the plaintiff has failed to prove that he is in possession of the suit field. Moreover, Misc. Civil Appeal No.104/2017 filed against the said order before the Hon'ble District Judge-1 Hinganghat has been dismissed in default on 10.01.2023.

7. Defendant no.1 has contended that the successive application under Order 39 Rule 1(c) of the Code is not maintainable.

8. In this regard the learned counsel for the plaintiff submitted that the previous application was only against defendant no.1 to 3 and the present application is against defendant no.4. Moreover, the plaintiff has now filed order of Tahsildar Samudrapur dated 16.05.2023 wherein it is specifically held that the plaintiff is in possession of the suit field and entry of he being in possession is directed to be made in form 7-b of the year 2022-23.

9. The learned counsel for the plaintiff further relied upon the Judgment of Hon'ble Supreme Court in the case of **Arjun Singh Vs. Mohinder Kumar, AIR 1964 SC 993**, wherein it is observed that scope of principles of Res-judicata is not confined to what is contained in section 11 but is of more general application. Res-judicata could be as much applicable to different stages as the same suit as to findings on issues in different suits.

10. The learned counsel for the plaintiff also relied upon the Judgment of Hon'ble Rajasthan High Court in the case of **Ramcharan Gupta Vs Krishan Kumar Agrawal, 2022 SCC Online Raj 1381**, wherein first order of temporary injunction restraining the defendant from alienating the suit property was passed on 06.10.2006 with the consent of both the parties. Thereafter, the plaintiff found that the defendant was making construction on the suit property and thereafter he made another application for temporary injunction in the year 2018 seeking to restrain the defendant from making any construction on the suit property. The Hon'ble Rajasthan High Court observed that the order of temporary injunction is capable being altered and varied on prima facie

proof of new situation which may arise subsequently and held that the second application was maintainable.

11. There cannot be any dispute about the preposition of law enunciated in aforesaid two precedents. It is trite that the doctrine of res-judicata applies to different stages of the same suit or proceedings. Hence, interim injunction once granted by the court will operate till the disposal of the suit or throughout the proceedings. However, such order is capable of being altered, varied or modified on prima facie proof of changed circumstances.

12. In view of the aforesaid touchstone of law, in the present case, as a necessary corollary whether seeking relief against defendant no.4 and filling of order of Tahsildar would amount to change circumstances, will have to be determined.

13. It must be noted that defendant no.1 on the strength of power of attorney allegedly executed by the plaintiff in his favour executed sale deed of the suit field in the year 2008 in favour of defendant no.2, who executed sale deed of the suit field in the year 2012 in favour of defendant no.3 who executed sale deed of the suit field in the year 2019 in favour of defendant no.4. Thus, defendant no.4 is claiming the title and possession of the suit field from defendant no.2 and 3.

14. Moreover, it must be noted that it was specifically held in the earlier temporary injunction order (Exh.5) that the plaintiff failed to prove his possession over the suit field. The plaintiff has now filed order of Tahsildar dated 16.05.2023 to show that he is in possession of the suit field. On the other hand, defendant no.1 has filed on record possession receipt executed by the plaintiff in the year 2007 in favour of

defendant no.1 to show that the plaintiff has handed over the possession of suit field to him. As already noted above, in the earlier temporary injunction order it was specifically held that the plaintiff was failed to prove his possession over the suit field. It was for the plaintiff to procure and file on record all the necessary evidence to support his case at the time of hearing of earlier temporary injunction application. He cannot be allowed to file the evidence in piecemeal and seek relief thereof at different stages of the same suit. Thus, mere filling of order of Tahsildar cannot be termed to be a change in circumstances. Therefore, the present application is hit by doctrine of res-judicata. Accordingly, the present application is not tenable. Hence, I pass the following order :-

ORDER

1. Application (Exh.64) is hereby rejected.
2. Costs in cause.

Samudrapur
Dt. 07.10.2023.

(D.S. Parwani)
Civil Judge, Junior Division,
Samudrapur