

**ORDER BELOW EXH.5 IN R.C.S. NO.4/2024**

(CNR No. MHWS02000024-2024)

Prataprao Deshmukh Vs. Sanjay Deshmukh & Ors.

1] The plaintiff has filed this application under Order 39 Rule 1 & 2 read with Section 151 of the Civil Procedure Code, 1908, praying that defendant Nos.1 to 5 be restrained from making construction/encroachment upon the land bearing Block No.378 admeasuring 01 H. 38 Are situated within the jurisdiction of village Wanoja, Tq. Risod & Dist. Washim, more particularly described in para No.1 of this application (for short 'suit land'), till disposal of the suit.

2] Defendant Nos.1 to 5 have filed their say to this application vide Exh.37.

3] In the light of contents of this application & say Exh.37 filed by defendant Nos.1 to 5, following points arise for determination, and I have recorded my findings thereon for the reasons stated below :

SR. NO.	POINTS	FINDINGS
1]	Whether the plaintiff proves that he has a <i>prima-facie</i> case ?	In the negative.
2]	Whether the plaintiff proves that balance of convenience lies in his favour ?	In the negative.

3]	Whether the plaintiff proves that he will suffer irreparable loss, if injunction is not granted in his favour ?	In the negative.
4]	What order ?	Application is rejected.

REASONS

4] I have heard Ld. Advocate Mr. Agame for the plaintiff & Ld. Advocate Mr. Deshpande for defendant Nos.1 to 5 at considerable length, and have gone through record of the suit.

AS TO POINT NO.1 :-

5] It is case of the plaintiff that the suit land is E-class land which belongs to the Government. Defendant Nos.1 to 5 have no concern whatsoever with it. Despite that, they have made an encroachment upon the suit land to the extent of an area admeasuring 60 X 40 feet (which is known as property No.435), and also to the extent of an another area admeasuring 60 X 40 feet (which is known as property No.436/new property No.449), more particularly described in para No.2 of this application. The plaintiff has further stated that he is Deputy Sarpanch of village Wanoja. However, defendant Nos.1 to 5 are landlords of the said village, and they are having man power. The some land out of the suit land is given to Z. P. School, needy people & Veterinary. It is further contention of the plaintiff that sister-in-law of defendant Nos.1 to 3 & wife of defendant No.4 was Sarpanch of Gram Panchayat, Wanoja, and she illegally gave lands to defendant Nos.2 & 3 out of the suit

land, and accordingly, names of defendant Nos.2 & 3 stood mutated to 8-A extract/assessment extract of Gram Panchayat, Wanoja.

6] The plaintiff has further stated that he had applied to Block Development Officer, Panchayat Samiti, Risod (who is defendant No.7) for removal of encroachments made by defendant Nos.1 to 5 upon the suit land, but in vain. However, Gram Panchayat, Wanoja has issued a notice dated 07/12/2023 to defendant Nos.1 to 5 calling upon them to remove their encroachments, but it turned in futile. On the contrary, defendant Nos.3 & 4 have given false reply to the notice dated 07/12/2023. It is further contention of the plaintiff that on dated 15/10/2023, he & other villagers asked defendant Nos.1 to 5 to remove their encroachments, but they did not respond. However, defendant Nos.6 to 9 (who are Officials of the Government) are not taking steps for removal of encroachments made by defendant Nos.1 to 5 upon the suit land. It is, thus, contention of the plaintiff that in order to protect the suit land/Government property, he has filed the present suit for mandatory injunction against defendant Nos.6 to 9 for removal of encroachments made by defendant Nos.1 to 5 upon the suit land, and for perpetual injunction in respect of restraining defendant Nos.1 to 5 from making encroachment upon the suit land. The plaintiff has, thus, stated that he has a *prima-facie* case.

7] Defendant Nos.1 to 5 have filed their say to this application vide Exh.37. They have denied contents of this application in *toto*. It is the case of defendant Nos.1 to 5 that they are owners & possessors of their *respective* lands. They have not made

any encroachment upon the suit land. However, the plaintiff has no *locus-standi* to file the present suit. According to them, the plaintiff has filed the present suit out of political rivalry. With this, defendant Nos.1 to 5 have stated that the plaintiff has no *prima-facie* case, and therefore, this application is liable to be rejected.

8] Ld. Advocate Mr. Agame for the plaintiff has vehemently submitted that the plaintiff being citizen of India has every right to protect the property belonging to the Government & accordingly, the suit filed by him is not barred by any law. He has further submitted that defendant Nos.1 to 5 have made encroachments upon the suit land/Government property & therefore, the plaintiff has a *prima-facie* case. He has placed his reliance upon following case laws -

i) National Sports Club of India & Ors. Vs. Nandlal Dwarkadas Chhabria & Ors. (First Appeal Nos.1618 of 1996 & 1625 of 1996) decided on dated 24/02/1997, wherein it has been held by Hon'ble Bombay High Court that '*the individual can file a suit if his rights are affected, and he is not bound to file a suit in representative capacity.*'

ii) Damodar Dnyandeorao Sarap Vs. Haribhau Govindrao Pakdane & Anr., wherein it has been held by Hon'ble Bombay High Court, Bench at Nagpur that '*when a civil suit can be filed for setting right the public injury caused by some encroachment without resorting to alternate remedy available under Municipal or Panchayat Act, a civil suit filed for removal of private injury resulting from likewise filed.*'

9] As against this, Ld. Advocate Mr. Deshpande for defendant Nos.1 to 5 has submitted that the suit itself is not maintainable as no any private right of the plaintiff has been infringed. He has further submitted that the plaintiff himself has stated in the plaint that some land out of the suit land is given to Z. P. School, needy people & Veterinary ; and therefore, the plaintiff himself does not know how much portion out of the suit land remains in possession of Gram Panchayat, Wanoja. He has, thus, argued that injunction cannot be granted in respect of indefinite portion. With this, he has prayed for rejection of this application.

10] It is not in dispute that under Section 53 (2) of the Act, Gram Panchayat has power to remove encroachments appearing on public property. I have minutely gone through contents of the plaint. It is seen that in para No.5 of the plaint, the plaintiff has stated that Gram Panchayat, Wanoja has issued notice dated 07/12/2023 to defendant Nos.1 to 5, calling upon them to remove their encroachments appearing on the suit land. Upon perusal of contents of para No.3 of the plaint, the plaintiff has stated that he is Deputy Sarpanch of village, Wanoja. However, in array of the plaint, the plaintiff has not stated so. Besides this, it is pertinent to note that the plaintiff is not signatory authority of the notice dated 07/12/2023. However, it is not case of the plaintiff that Gram Panchayat, Wanoja has by its Resolution given to him an authority to file the present suit. Therefore, it is seen that the plaintiff has filed the present suit in individual capacity. Upon close scrutiny of the plaint, it is seen that the plaintiff has nowhere stated that his right has been infringed due

to an encroachments made by defendant Nos.1 to 5 upon the suit land. Admittedly the present suit has not been filed under Order 1 Rule 8 of the C.P.C. which provides for representative suits, or under Section 91 of the C.P.C. which provides for suits for public nuisances.

11] I reiterate that as per Section 53 (2) of the Act, Gram Panchayat has every power to remove illegal encroachments. I further state that if Gram Panchayat fails to remove illegal encroachments, the Collector has power to remove such encroachments under Section 53 (2A) of the Act either *suo moto* or upon an application being made to him. Not only this, it also becomes evident from contents of the plaint itself that Gram Panchayat, Wanoja has issued a notice dated 07/12/2023 to defendant Nos.1 to 5 calling upon them to remove their encroachments. Upon perusal of contents of the judgment delivered in the case of **Damodar Dnyandeorao Sarap**, it is seen that the suit filed by individual in respect of removal of encroachments upon the public property is maintainable if the right of said individual has been infringed.

12] I reiterate that contents of the plaint are totally silent as to inconvenience or injury to right of the plaintiff to enjoy his property, if any. Furthermore, I would like to mention that Gram Panchayat, Wanoja has already initiated the proceeding for removal of encroachments of defendant Nos.1 to 5 by issuing them notice dated 07/12/2023. To sum up, I would like to mention that the plaintiff has no *locus-standi* to file the present suit in individual capacity in view of the ratio laid down in **Damodar Dnyandeorao**

Sarap's case and Sections 53 (2) & 53 (2A) of the Act also. It is, however, matte of the record that today itself, the plaint has been rejected vide order passed below an application Exh.22 filed by defendant Nos.1, 2, 4 & 5.

13] In the light of aforesaid discussion, I have no hesitation to hold that the plaintiff has failed to prove that he has a *prima-facie* case. Holding so, I have answered point No.1 in the negative.

AS TO POINT NO.2 :-

14] I have already held that the plaintiff has no *prima-facie* case. Therefore, in my considered view, comparative hardship/mischief will not be caused to the plaintiff if injunction is not granted in his favour. Hence, I am inclined to hold that balance of convenience does not tilt in favour of the plaintiff. In the result, I have no impediment to hold that the plaintiff has failed to prove that balance of convenience lies in his favour. Holding so, I have answered point No.2 in the negative.

AS TO POINT NO.3 :-

15] I have already held that the plaintiff has no *prima-facie* case & balance of convenience does not tilt in his favour. Therefore, I have no hesitation to hold that if the injunction is not granted in favour of the plaintiff, he will not suffer irreparable loss. Hence, I have no hesitation to hold that the plaintiff has failed to prove that he will suffer irreparable loss if injunction is not granted in his favour. With this, I have answered point No.3 in the negative.

AS TO POINT NO.4 :-

16] My aforesaid findings left me with no option but to arrive at inevitable conclusion that this application being bereft of merits is liable to be rejected. Holding so, I proceed to pass the following order -

ORDER

- 1] Application Exh.5 stands rejected.
- 2] Costs in cause.
- 3] Parties to the suit shall take note of this order.

Washim.
Date - 05/07/2024.

(S. S. Ubale)
Civil Judge, (Sr.Dn.), Washim.

C E R T I F I C A T E

I affirm that the contents of this PDF file judgment/order are same word to word, as per original judgment/order.

- 1) Name of Stenographer :- S. P. Kale (Stenographer G-III)
- 2) Name of Court :- Civil Judge (S.D.), Washim.
- 3) Date :- 05/07/2024
- 4) Order signed by the
presiding officer on :- 05/07/2024
- 5) Order uploaded on :- 05/07/2024