

RCS No.96/2022
Shakuntala Vrs. Pranav

ORDER BELOW EXH. 05

This is an application filed by plaintiffs under order 39 Rule 1 and 2 read with 151 of the Code of Civil Procedure.

02. Plaintiffs averred that plaintiff No.1 owned license and running a jewelry shop namely "Shubh Nakshatra Jewelry". Plaintiff No.2 is the son of plaintiff No.1. Before starting the said shop, the husband of plaintiff No.1 namely Hanumandas Omkarmal Oza executed oral agreement with defendant No.2 and took the shop on rent in the year 2011 and started jewelry shop therein. Total admeasuring area of shop is 400 Sq. Ft. and same is situated in the corner of the basement of Rathi complex having two shutters. Front side of one shutter is situated towards northern side, and front side of another shutter situated towards western side. Main front side of the shop is situated from the western side through 4 feet passage. From the northern and western side lay out road of the complex has been situated.

Fourth boundaries of the said shop

East- Aditya cookeris shop

Western- 4 feet complex road

North- Passage

South- Store room and stair which is possessed by the plaintiffs.

Hereinafter this aforesaid property as more particularly comprised in para No.1 of the plaint be referred as the suit property.

3. It is contended that in the year of 2011 plaintiff No.1 as

per oral agreement took the suit property from defendant No.2 on the basis of monthly rent. As per the oral agreement plaintiff paid monthly rent to the defendant in cash and in the mode of cheques. Apart from this plaintiff paid electricity bill per month. Therefore, relation of tenant and landlord still in existence between the plaintiff and defendant and therefore provision of Maharashtra Rent Control Act is applicable to this oral transaction. Though the plaintiffs were paying the fixed rent to the defendants as per the oral agreement but, the defendant No.2 told to the them to vacate the suit property. Thereafter plaintiff requested him that they are ready to pay rent amount as per oral agreement and they installed furnisher in the shop therefore they are unable to vacate the suit property immediately and they required few month to vacate the suit property. However, defendants pressurized them to vacate the suit property. On 13/10/2021 husband of plaintiff No.1 died. Thereafter , plaintiffs were paying the fixed rent to the defendant. However, on 21/12/2022 defendant No.1 removed the electric meter from the suit property and fixed on the other side by which plaintiff suffering inconvenience.

4. On 21.12.2022 defendant No.1 intentionally increased the height of the wall situated from the western side of the suit property to close the way and stair which gives access in the suit property. When plaintiff Nos.1 and 2 asked to the defendants then abused to the plaintiffs in filthy language and beat them. Now, defendant without due process of law tried to disposes them from the suit property. On 26.12.2022 plaintiff No.2 when opened the door of suit property he came to know that defendant broken the *Sajja*

situated on the suit property and put the wastage material in the passage of the said shop. When plaintiffs asked about same then defendants abused them in filthy language. Defendants also threatened that if plaintiffs not vacated the suit property within two days then they will take the suit property in their possession along with all equipment situated therein. Plaintiffs requested to the defendants to give him at least 9 to 10 month to vacate the suit property. But defendant threatened to vacate the suit property within one day. As the plaintiffs got feared he lodged report against defendants on 26.12.2022. But concern police advise them to file suit in court. Since 10 to 11 years suit property is in actual possession of the plaintiffs as they are being tenants of defendants. Therefore, plaintiff has prima facie case balance of convenience also lies in favor. If temporary injunction is not granted in favor of plaintiffs, then they will cause irreparable loss. Hence, prayed to grant the application.

5. On the other hand defendants filed their say at Exh.13. Wherein defendants admitted that plaintiff running a Sarafa shop. Defendant further admitted the husband of plaintiff No.1 namely Hamunatdas Oza talk with defendant no.2 and as per the oral agreement he took the suit property on rent.

6. Defendants contended that there was no any oral agreement with present plaintiffs. The father of plaintiff No.2 was having good relations with defendant No.2. Thereafter, the father of plaintiff made demand of suit property to run the said shop. Defendant No.2 got agreed with the father of plaintiff and gave the

suit property on rent. Father of plaintiff No.2 was agreed with the defendant No.2 that as and when defendant no.2 call him, he will vacate the suit property. Then the father of plaintiff started Shubh Nakshatra jewelry shop. As the defendants in need of the shop they told to the father of plaintiff to vacate the suit property. However, the father of plaintiff was died. Now the defendants are running Rathi Collection shop therefore, they requires suit property to increase his business.

7. It is contended the suit property situated in Rathi Complex, frontal area of the complex situated towards northern side. Main entry gate of the complex is also situated towards the northern side. So also, 6 to 7 ft. stairs is situated from the same side which is used by all the proprietor of the shop situated in the basement of the complex and the present plaintiffs also access in their jewelry shop by same stair. The plaintiff has shown false information before the court and obtained interim ex parte injunction order.

8. As defendants were in need of the suit property. Hence, he demanded the shop to the plaintiff No.1 and instructed her to vacate the same. As the defendants want the additional place in the said complex they are improving and constructing in the said complex. As the stair shown by plaintiff proceeding northern and southern side of the suit property is not in existence. The stair situated from southern side of the suit property only use for the purpose of store room of said complex and not for the use of plaintiff. Therefore, the plaintiffs do not have any right to use the said stair. Plaintiffs have not come before the court with clean hand

and thereby plaintiff has no prima facie case and balance of convenience also not lies in their favor and no irreparable loss would be caused if temporary injunction is not granted in favor of plaintiff. Hence, prayed for rejection of application.

9. Heard learned advocate for both sides, perused the application, written statement and documents on record. Following points arise for my determination I recorded findings thereon with reason stated below.

Sr.No	Points	Findings
1	Whether plaintiffs prove prima facie case?	Yes
2	Whether plaintiffs prove balance of convenience lies in their favor?	Yes
3	Whether plaintiffs prove that if injunction not granted in their favor and against defendants , they will suffer irreparable loss?	Yes
4	What order?	As per final order

REASONS

10. In Support of the application plaintiff relied upon following documents :-

1. report dated 26.12.202
2. 16 xerox copies of rent receipts.
3. 10 xerox copies of electric bill
4. 6 Photographs of suit property

On the contrary, defendant relied upon following

documents:-

1. 15 photographs of the suit property
2. draft map of complex including suit property.
3. 6 affidavits of witnesses as per Exh.18.

As to Point Nos.1 to 3 :

11. As point nos. 01 to 03 are interlinked with each other hence, to avoid repetition these points are taken together for discussion.

12. Ld. Advocate for plaintiffs submitted that the father of plaintiff No.2 took the suit property on rent on the basis of oral agreement and same was executed between the father of plaintiff No.2 and defendant No.2. Now, as per the averment of plaint and present application, plaintiffs are in possession of property and they are paying monthly rent on each month. So also, plaintiff paying electricity bill per month. Plaintiff produced 16 xerox copies of rent receipts which shows that how the plaintiff credited monthly rent amount of suit property in the account of defendant. He further submitted that, in written statement defendant admitted the fact of oral agreement in respect of suit property which was executed between father of plaintiff No.2 and defendant No.2. Hence, it reveals that the relation as tenant and landlord between plaintiffs and defendant are in existence. Now the defendants are dispossessing plaintiffs without following due process of law and they are closing stair of suit property which is used by customer and plaintiff to access in the suit property. The plaintiff has prima facie case and balance of convenience also lies in their favor and if,

temporary injunction is not granted in favour of plaintiffs then plaintiff will cause irreparable loss which will not be compensated in money.

13. On the other hand, the Ld. Advocate for the defendants submitted that there is no oral agreement between the plaintiffs and defendant No.1. Now defendants want additional space to increase his business therefore, they are constructing remaining construction of said complex. If such construction made by the defendant no inconvenience would be caused to the plaintiffs. The plaintiffs are having 7 to 8 ft. stair from the northern side of the said complex and all shop holder using said stair to access in their shop. No stair is situated from the western side and southern side to access in the suit property. One stair is situated from the southern side of the suit property it was only use for the store room of the said complex of the defendant. He invited my attention on the draft map and submitted that how the plaintiff has way to access in the suit property from the stair situated from the northern side of the said complex. So also he shown in the said map that how the stair situated from back side of the suit property is only used by the defendant for their store room and how the plaintiff do not have any right to use that back stair. He also submitted that defendants have produced the photographs of suit property. He also invited my attention on the photographs. He also submitted that these photographs filed by defendant no.2 and he also filed separate affidavits thereof. So also, defendants have produced six affidavits in support of their say. These witnesses also states that construction which constructing by the defendants will not cause inconvenience to the plaintiffs, and plaintiff having way to

access in the suit property from the norther side of the complex. Hence, he prayed to reject the application.

14. Perused the application, say, plaint and documents produced by the both sides on records. Initially plaintiffs have to prove whether plaintiffs have prima facie case or not. The expression prima facie means at the first sight or on the first appearance or on the face of it. As per the admitted fact as incorporated by the defendants in their written statement is that there was oral rent agreement in respect of suit property between father of plaintiff No.2 and defendant No.2. Since then, father of defendant was running jewelry shop in the suit property. Plaintiffs averred father of plaintiff No.1 is died. Though plaintiff are paying regularly monthly rent of the suit property, but defendant without any reasonable cause threatening them to vacate the suit property. So also defendants closing the way by making construction on the stair which access in the suit property. When plaintiffs told them about the same then defendant abused theme in filthy language and also beat them. It has not come on record that the father of the plaintiff No.02 had vacated the suit property during his life time. Therefore, it infers that after the death of husband of the plaintiff No.1 still plaintiffs are in continuous possession of the suit property. To establish the possession over the suit property plaintiffs have produced 16 xerox copies of the rent receipts. Perused said copies which contends that, per month Rs. 18,150/- have been credited in the account of defendant No.2. So also, plaintiff produced on record electricity bill. These documents itself shows the prima facie possession of the plaintiff over the suit property.

15. Though the defendants contended that the plaintiff having no right to avail the stair situated from the southern side of suit property. In support of that defendant also produce 15 photographs of suit property along with list Ex.11, and contended that plaintiff having 7 to 8 feet stair situated from northern side of the said complex and therefore, plaintiff do not have any right to use the stair which is situated from the southern side of the suit property. Perused the affidavits filed by the defendant of 6 witnesses alongwith Ex.18 and they have supported that the plaintiff has right to access only from the northern side stair and not from the southern side stair of the suit property. So also,they contended that if such construction is made by defendants then no inconvenience would be caused to plaintiffs.

16. However, plaintiffs have filed photographs which shows that there is one stair from the southern side of the suit property attached with the open passage which proceed towards suit property. It is pertinent note here as on the basis of oral agreement the defendant No.2 gave the suit property on rent to the father of plaintiff No.2 and the suit property is having two shutter, front side one shutter is situated from northern side and another shutter's front side is situated from western side. At this juncture it cannot be conclude whether the stair of the suit property situated in the southern side of suit property is the part and parcel of the suit property. However, prima facie it appears that the plaintiffs are in possession of the suit property in virtue of oral agreement. Therefore, defendant cannot dispossess plaintiff without following due process

of law. The southern side stair shows that it can be used for the access of customer and plaintiff if such passage is closed and plaintiff not allowed from using southern side stairs then it may cause inconvenience. At this stage, as discussed supra it can not be concluded whether the southern side stair is the part and parcel of the suit property? It can only be decided after the conclusion of trial. Therefore, prima facie case is made out by the plaintiff and balance of convenience also lies in favor of plaintiffs. If temporary injunction is not granted in favor of plaintiffs and against defendants then possibility of irreparable loss cannot be denied. Hence, I answered point Nos.01 to 03 in affirmative and to answer point No.4 passed following order.

ORDER

1. Application below Ex.5 is allowed.
2. Defendants and on behalf them any persons shall hereby restrained from vacating the plaintiffs from the suit property till the final disposal of the case. Defendants shall also restrained from causing disturbance to the ways of plaintiff which gives access in the suit property as comprised in para No.1 of the application till the final disposal of this suit.

Date :- 10/01/2023

Sd/-
(R.S. Mankar)
2nd Jt. C.J.J.D. Mangrulpir,
Dist. Washim.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/ Order are same word to word as per the original order.

Name of Court :- 2nd Jt. Civil Judge (Jr.Dn.) and
J.M.F.C., Mangrulpir, Dist.
Washim.

Presiding Officer :- R.S. Mankar

Judgment uploaded :- C. R. Gadge (Stenographer L.G.)
by

Date of Judgment :- 10.01.2023

Judgment/Order :- 10.01.2023
signed by the
presiding officer on

Judgment/Order :- 13.01.2023
uploaded on