

MHWS070013922024

RCS No. 44/2024

Manohar Vs. Udaysingh



ORDER BELOW EXH-05
(Passed on 19th August, 2024)

1. This is an application filed by the plaintiff under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 to restrain the defendants from causing obstruction to the peaceful possession and cultivation over the suit property.

2. plaintiff is the owner and lawful possessor of the suit property i.e. an agricultural land admeasuring 1H 15R out of the field Gat No.11 situated at Mouza Devchandi, Tq.Karanja, Dist.Washim (for brevity hereinafter referred to as the suit property). The plaintiff has described the four boundaries of the suit property as follows;

To the East - Field of Udaysingh Rathod (Defendant No.1)

To the West - Field of Shrikrushna Ganjare

To the North - Field of Maroti Sansthan

To the South - Field of Ishwar Gawande

3. It is further contended that the field Gat No.11 at Mouze Devchandi was owned by the father of the plaintiff, who partitioned his agricultural land among himself and his sons Manohar, Datratray and Shrikrushna on 02/02/2005. Accordingly, 1H 15R land came to the share of the plaintiff to which he is cultivating peacefully and without any interruption.

4. The defendant No.1 is the owner of 1H 21R land out of Gat No.10 situated at Mouza Devchandi which is adjacent to the filed of the plaintiff from eastern side. Defendant No.2 is the sister of defendant No.1 who has also 1H 4R land in Gat No.10. It is the contention of the plaintiff that

defendants have no concern with the suit property. However, both the defendants are obstructing the plaintiff from the cultivation of his field. On 17/06/2024 defendants came in the suit field and did not allow the plaintiff to carry out the sowing operations. They also abused the plaintiff in a filthy language and threatened to kill. Thus, the complaint was lodged at the police station Karanja on 18/06/2024. But, no serious action was taken by the police. Hence, the plaintiff has knocked the doors of this court.

5. Both the defendants appeared in the present suit and filed their written statement and say to the present application. Defendant no.1 and 2 submitted that the plaintiff has suppressed the material facts. It is the contention of the defendant that father of the defendant No.1 namely Maniram Laxman Rathod was belonging to the land at Mauza Devchandi, Gat No.10 total area 5H 15R land. He used to cultivate the said land without any interruption, but due to old age from last ten years he handed over the said land to the defendant No.1, who used to cultivate the said land frequently, because his son was taking education at Karanja. Thus, he gave the said land on rental basis. After that Maniram Rathod wished to give share to his daughter by way of a gift-deed. For that purpose, the land was measured by T.I.L.R. Karanja on 09/06/2022. Accordingly, boundaries were fixed in Gat No.10. The result of measurement was that the plaintiff has encroached the area of 1H 26R land of the defendant No.1. Thus, it is the contention of the defendant that the plaintiff has suppressed this material fact. Therefore, the plaintiff is not before the court with the clean hands.

6. The points for determination along with my reasons are as follows.

	Points	FINDINGS
1	Whether the plaintiff has a prima facie case?	Yes
2	Whether the balance of convenience lies in favour of the plaintiff?	Yes

3	Whether the plaintiff will suffer an irreparable loss if an injunction as prayed is not granted in his favour?	Yes
4	What order?	Application Allowed

REASONS

As to point no.1 to 3:-

7. The plaintiff has filed on record 7/12 extract of Gat No.11, Ferfar Patrak, FIR. While the defendant No.1 and 2 filed 7/12 extract of Gat No.10, Gav Namuna 8-A, Ferfar Nondvahi, boundary demarcation map, etc.

8. Heard both the parties and perused their respective pleadings. It is argued by the Ld. Adv. D.K. Pinjarkar for the plaintiff that the plaintiff is the owner and the possessor of the suit property. The suit property is in danger of being encroached and damaged. Therefore, grant of interim injunction is most necessary. The prima facie case is made out in favour of the plaintiff and the plaintiff will have to suffer the irreparable loss if the injunction is not granted in his favour. Hence, prayed to allow the application.

9. On the contrary, both the defendants filed their say contending that no injunction can be granted to the plaintiff when he has suppressed the material facts from the court. The plaintiff himself has encroached over the property belonging to the defendant in Gat No.10. Hence, prayed to reject the application.

10. Perused the application, say of the defendants and the documents filed on record by the plaintiff. From the bare perusal of the application, it is prima facie seen that the contents mentioned in the application are supported with the documents. It is prima facie seen that the plaintiff is the owner of an agricultural land situated at Gat No.11 along with his brothers. He got the suit property in family partition. Therefore, it is prima facie seen that the plaintiff has ownership and a lawful possession over the suit property. On the contrary, it is the contention of the defendant that the

plaintiff has encroached 1.26R land of Gat No.10. But, it is not mentioned anywhere that which portion of Gat No.10 is encroached by the plaintiff or some one else. Moreover, it is not clear from the documents filed by the defendants that which action has been taken by the defendant after he noticed the said encroachment and as to why he has not filed any proceeding against the plaintiff. Hence, I am of the view that plaintiff has a prima-facie case in his favour.

11. As discussed above, plaintiff has made out an arguable case. However, mere presence of prima-facie case is not the sole criterion for granting injunction. Other two conditions i.e. balance of convenience and irreparable loss are also required to be established.

12. It is seen that the plaintiff is in continuous possession of the suit property and he is a farmer. On the other hand, the defendant No.1 has himself stated that he cultivates the land frequently, to the education of his son. If the injunction is not granted, plaintiff will suffer great loss rather than the defendants.

13. In the absence of these foremost required material and without rebutting material placed by plaintiff as also establishing that defendants are suffering grossly than plaintiff, it cannot be concluded that defendants will suffer greater hardship than plaintiff. In such circumstances, if the injunction is not granted, serious prejudice will be caused to plaintiff. Therefore, it appears that the balance of convenience lies in favour of the plaintiff.

14. In the light of the discussion made in the foregoing paragraphs, I find that the plaintiff is having a prima-facie case. Plaintiff has claimed that he is facing mental hardship due to the threats given by the defendants no.1 and 2 and therefore, necessary to restrain the defendants from obstructing his lawful possession over the suit property. The claim of the plaintiff cannot be said to be unjust or unreasonable. Balance of convenience tilts in favour of the plaintiff. He would suffer irreparable loss if the temporary injunction, as

prayed is not granted. Hence point no. 1 to 3 are answered in affirmative. Resultantly, in answer to point no. 4, I pass following order.

ORDER

1. Application is allowed.
2. Defendants, their agents, servant, or any person appearing on their behalf are hereby restrained from causing obstruction over the suit property and restrained the defendants from causing obstruction to the lawful possession of the plaintiff over the suit property till the final decision of suit.
3. Costs in main cause.

Date : 19/08/2024. Karanja (Lad)		(Smt. S.N.Pund) Jt.Civil Judge (Jr.Dn.), Karanja (Lad).
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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 Stenographer	:	D.V. Daware (Stenographer Grade-III
Court Name	:	Jt. Civil Judge (JD) & JMFC, Karanja.
Date	:	19/08/2024
Order signed by the Presiding Officer on	:	19/08/2024
Order uploaded on	:	19/08/2024