

Order below Exh.5

01] This is an application filed by the plaintiff under Order 39 Rule 1 and 2 of Code of Civil Procedure for grant of temporary injunction order till disposal of the suit.

02] The applicant/ plaintiff in the matter has come up with the case that he is owner and possessor of agricultural land field survey No.42, area 0.67HR which is bounded as -

To the West	:- Defendants field
To the East	:- Field of Sau.Sarika
To the South	:- Field of Sampade
To the North	:- Field of Mahavir Chaware

03] It is the case of plaintiff that his father gifted said 0.67HR land to him by way of registered gift deed. His father also gifted the remaining 0.29HR out of survey No.42 to the mother of plaintiff. The plaintiff further come up with the case that his father has also sold 0.11R land out of survey No.42 to the defendant which was excluding the well situated in said survey No.42. It is his further case that the defendant illegally encroached on his land and taken the said well in his possession. The said fact of encroachment came to the knowledge of the plaintiff when he got measured his land through office of T.I.L.R. It reveals in the said measurement that the defendant has encroached 0.09R land owned by the plaintiff including the well which was also owned by the plaintiff.

04] The plaintiff further come up with the case that his crops of wheat is

standing in his field. The defendant is obstructing him from taking water from the well for the said standing crops. The plaintiff further come up with the case that if the defendant will not be restrained from obstructing him, then his standing crops will be spoiled. Hence, he prayed for granting temporary injunction and prayed for direction to restrain the defendant and all persons claiming through him from obstructing him from fetching water from the suit well situated in the encroached portion of 0.09R land out of survey No.42 and owned by the plaintiff.

05] In reply, the defendant contended that he has not encroached on plaintiff's land. The suit well is situated on the land purchased by him from plaintiff's father. The plaintiff has deliberately suppressed the fact that the defendant has also purchased 0.27HR land out of survey No.52/2 from plaintiff's father apart from 0.11R land of survey No.42. The plaintiff further suppressed the fact that the plaintiff's father was partner along with the defendant in Gajanan Ginning and Pressing Factory which was situated on survey No.42. The plaintiff's father thereafter left the said partnership.

06] The defendant further come up with the case that he is running his above said factory on 0.38R land purchased by him from plaintiff's father. The said purchase land includes the suit well. He is using water of said suit well for his factory. The plaintiff never use the water of said well for his crops or for any other purpose. The plaintiff is having his own bore-well and he is using the same for his purpose. The suit and temporary injunction application is filed with ill motive to harass the defendant. With this submission, the defendant prayed for rejection of the application with costs.

07] Heard learned advocate Shri F.S.Khan for the plaintiff and learned advocate Shri D.K.Pinjarkar for the defendants. On the basis of rival contentions of the parties, following points arose for my determination and I have given my findings to each of them for the reasons mentioned below.

<u>POINTS</u>	<u>FINDINGS</u>
1] Whether prima facie case exists in favour of plaintiff ?	In the negative.
2] Whether balance of convenience lies in favour of plaintiff ?	In the negative.
3] Whether irreparable loss will be caused to the plaintiff, if temporary injunction will be refused ?	In the negative.
4] What Order ?	As per final order.

REASONS

As to point Nos. 1 to 4 :-

08] In the present matter, the plaintiff specifically come up with the case that the defendant encroached on his 0.9R land which includes the suit well. The defendant denied the said contention and come up with the case that the said land and the suit well was purchased by him from plaintiff's father. Whether the defendant has encroached on plaintiff's land as alleged by plaintiff in the matter needs to be decided on merit. At this stage, it is seen that admittedly the defendant is in possession of the land in dispute as well as suit well.

09] It is pertinent to note that though the plaintiff come up with the case that defendant is restraining him from fetching water for his standing crops from the suit well, he nowhere pleaded that he previously fetched water from the suit well for his crops in the previous year or at any point of time. On the contrary, the defendant specifically come up with the case that the plaintiff never fetched water from the suit well for any purposes and the plaintiff has his own bore-well situated at his land which is sufficient for his purposes.

10] Though such plea is taken by the defendant, the plaintiff has not taken any pain to file any counter submission or affidavit to meet out the said case of defendant. Further, there is prima facie no material, oral or documentary from which it can be inferred that the plaintiff had previously fetched water from the said suit well. It is not even the case of plaintiff that his electric motor pump or any other equipment are attached to the said well for fetching water. Looking towards the pleading of both the parties and in view of the absence of material on record, it needs to be held that prima facie plaintiff failed to establish that he was and is using the suit well for fetching water for his crops.

11] As I have already mentioned that prima facie nothing on record to held that the plaintiff was and is using the suit well for fetching water for his crops, if the relief of temporary injunction as claimed by the plaintiff will be granted in his favour, then it will be in the nature of temporary mandatory injunction. It is settled principle of law that temporary injunction in mandatory form is required to be granted in rare to rarest case. In the present matter, if such relief will be granted, then it may disturb the existing position on spot.

12] Admittedly, one bore-well is situated in the land presently own and possesses by the plaintiff. The defendant specifically come up with the case that water from said bore-well is sufficient for the purpose of plaintiff. The plaintiff has not placed on record any material in the nature of document or affidavit to show that the water from the said bore-well is not sufficient for his purpose. Thus, it cannot be said that irreparable loss will be caused to the plaintiff if temporary injunction as prayed for, is not granted in his favour.

13] It is further pertinent to note that though the plaintiff come up with the case that his father sold 0.11R land to the defendant out of survey No.42 excluding the suit well, he has not filed affidavit of his father or other attesting witnesses to the sale-deed between his father and the defendant. At this stage, without going into the trial even for prima facie purpose, it cannot be held that the land sold to the defendant was excluding the suit well. Thus, at this stage of the matter, the plaintiff has not made out any case for granting relief of temporary injunction much more in mandatory form as claimed by him. Hence, I am giving my findings to point No.1 to 3 in negative and in response to point No.4, I pass following order.

ORDER

- 1) Application Exh. 5 is hereby rejected.
- 2) Costs to follow the event.

Date: 28/06/2017.

(R.R.Lohiya)
Civil Judge, Junior Division,
Karanja[lad]

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	:	--
Court Name	:	Civil Judge (JD), Karanja.
Date	:	28-06-2017
Order signed by the Presiding Officer on	:	28-06-2017
Order uploaded on	:	28-06-2017

