

MHWS090005742023



R.C.S. No. 23/2023

Ramhari ..Vs.. Vasudev

**ORDER BELOW EXHIBIT- 05**

(Passed on 07/05/2024)

1. The present application is filed under Order 39/ Rule 1& 2 R/w Section 151 of the CPC to restrain defendant no.1 and 2 from obstructing in any manner and also from disturbing the lawful possession of the suit property. Say filed by the defendants at Exh.11. Heard Shri. Khan learned advocate for the plaintiff/applicant and Shri. Thakare learned advocate for the defendant/non applicant. (Hereinafter parties are referred to as the "***Plaintiff***" and "***Defendant***"). Perused the plaint, application for T.I., reply and affidavits filed in support of the application for temporary injunction and the documents.

2. filtering unnecessary details in short it is the contention of the plaintiff that, the plaintiff and defendant No.2 are the real brother and sister. Defendant No.1 is the husband of defendant No.2. The plaintiff has possession over the joint property situated at Mouje-Wanjarkheda, Gat No.10/1/C, admeasuring area 1.62 HR, having boundaries as towards East field of Devidas Paraskar, towards West field of Dipak Dhabale and Ramrao Gatule, towards North field of Subhash Landage and towards South field of Pramod Deshmukh. (Herein after the property as described in para No. 1 of the plaint is referred to as the ***Suit property***).

3. It is the further contention of the plaintiff that, the suit property was originally owned by the grand-father of the plaintiff namely Thawara Zinga Jadhav. On 12/05/1993 he died. Therefore, the name of his legal heirs namely Laxman Thawara Jadhav, Nabi Bhika Rathod, Methibai Namdeo Chavhan updated in revenue record dated 27/10/1994. Thereafter, suit property was cultivated by the mother and father of the plaintiff. After the death of his mother and father the names of plaintiff, Savita Jagdish Rathod, Shila Shalikram Rathod and defendant No.2 came to be updated as his heirs. His parents had sold the suit property to the plaintiff vide agreement on stamp-paper for consideration of Rs.40,000/-.

4. It is the further contention of the plaintiff that, on 15/05/2023 his mother died. Thereafter, he has cultivated the land. Defendant No.1 and 2 threatened to him to grab the possession of the suit property. They further on 09/06/2023 abused him and threatened to him to kill. They illegally want to grab his property. On 20/06/2023 he filed report with P.S. Manora. On 21/06/2023 he further filed report with the Sub-Divisional Office, Karanja. Despite the fact no action taken against them. There is every possibility of obstruction over the suit property by the defendants. Therefore, he has prayed for temporary injunction for the purpose cited supra.

5. The defendants filed their say and denied all the material contention of the plaintiff. It is submitted on their behalf that suit property is ancestral joint property of the plaintiff and defendant no.2. During the life time of the mother of the plaintiff, she, her sister Savita and defendant No.2 had given the area 0.81R to the defendant on 27/03/2023 for next 20 years on Makta basis for

consideration amount of Rs.1,20,000/-. In return for consideration the area 81R was given to the defendant out of suit property. Plaintiff was trying to grab the share of their deceased mother. Plaintiff has lodged false report. Defendant is obtaining crops from the said land. He has not added necessary parties to the suit. He has filed the suit only to harass defendant. Therefore, they have prayed for rejection of the application with costs.

6. I have gone through the rival submissions of both sides. I have also perused the documents placed on record in support of their respective contention. Following points arose for my determination. I record my findings for the reasons given below.

| <b>Sr.<br/>No.</b> | <b>POINTS FOR DETERMINATION</b>                                                                     | <b>FINDINGS</b>               |
|--------------------|-----------------------------------------------------------------------------------------------------|-------------------------------|
| 1.                 | Whether the plaintiff has made out prima facie case ?                                               | <b>NO</b>                     |
| 2.                 | Whether balance of convenience lies in favour of plaintiff ?                                        | <b>NO</b>                     |
| 3.                 | Whether any irreparable loss would cause to the plaintiff, if injunction as prayed is not granted ? | <b>NO</b>                     |
| 4.                 | What order ?                                                                                        | <b>As per final<br/>order</b> |

### **REASONS**

7. In order to substantiate the case of plaintiff he has relied on documents such as the copy of 7/12 extract of Gat No.10/1/C, mutation entries, death certificate of Mirabai, report dated 19/06/23, N.C.R. and sale agreement. On the other hand defendant

did not file any such documents.

**AS TO POINTS NO.1 TO 3:-**

8. As these points are interconnected thus same are being taken together for discussion. Relief of injunction under Order 39 Rule 1 is equitable and discretionary in nature. Such discretion can be exercised only when person comes to court with clean hands, has not suppressed material facts and makes out a prima-facie case. It is the case of the plaintiff that the suit property is the joint property which was purchased by him from his parents vide agreement supra. Now the defendants are trying to grab the said property by creating disturbance and threatening to him. He is the exclusive possessor of the suit property.

9. In view of the present facts of the case it is necessary for the plaintiff to establish the alleged threat and injury to his legal right and possession by the defendants. As with respect to the prima-facie case of the plaintiff, the fact that the suit property was actually owned by his grand-father and thereafter same came to the share of plaintiff and defendant No.2 by the virtue of heirship is not disputed.

10. It is argued by Ld. Adv. for the plaintiff that, he is the lawful possessor of the suit property. Therefore, his possession has to be protected. Such a relief can be granted even against co-sharers. Prima-facie case and balance of convenience is in favour of the plaintiff. Documents on record proved the case in favour of the plaintiff. This established the case in favour of the plaintiff and against defendant. Therefore, he is entitled to the relief as prayed. He has further relied upon Hon'ble Authority in the case of *Tanushree Basu and others Vs. Ishani Prasad Basu and others* [AIR

**2008 Supreme Court 1909]** in support of his contention.

11. Per contra Ld. Advocate for the defendant argued that, the plaintiff did not come with clean hands. Defendant No.2 is the co-sharers of the suit property. The said stamp-agreement is not legally recognized document. Plaintiff did not state the date when the suit property came in his possession. His title is clouded. Therefore, he further prayed for rejection of the application.

12. Perused the documents filed by the plaintiff. It appears that the 7/12 extract of the Gat No.10/1/C jointly mentions in the name of plaintiff and defendant No.2 along with 5 other co-sharers. However, the area as per 7/12 extract has been shown as joint. Further mutation entries shows the property in the name of Thawara Zinga Jadhav.

13. However, no cogent documentary evidence produced by the plaintiff on record which discloses that the plaintiff is in exclusive possession of the suit property as contended by him and defendants are trying to disturb his peaceful possession. Further, the plaintiff neither described date nor filed any document so as to establish his exclusive possession over the suit property. On the contrary, defendant has specifically contended and submitted that, the alleged suit property is ancestral joint property of the family. The document filed by the plaintiff is not sufficient to decide the matter in question. Plaintiff did not prima-facie establish that the defendant illegally tried to disturb his exclusive lawful possession.

14. Hence, at this stage it will not be just to hold that there is an injury or threat to the legal right of the plaintiff. In such facts and

circumstances of the case the fact of illegality of the act of the defendant is required to be proved by detailed evidence and same is a part of merit. While granting temporary injunction the plaintiff has to prove his prima-facie case on the date of the filing of the suit. In absence of cogent document's on record mere general contentions / allegations are not sufficient to grant the relief as prayed by the plaintiff. The plaintiff has not made out a strong case in his favour. In such case it will not be appropriate to grant temporary injunction as prayed at this juncture. Thus, I came to the conclusion that, plaintiff did not make out a prima-facie case. Hence, in view of the above discussion point No. 1 is answered in negative.

15. It appears that the plaintiff approached the Court and prayed for restraining the defendants for the reasons supra. On the contrary, admittedly the plaintiff and defendants have the property out of the common and same Gat number. From plaint, affidavit, documents and submissions by both the sides, at this stage no prima-facie case made out in favour of the plaintiff. If the relief as sought is granted to plaintiff, same would result into restraining the other lawful possessor from possessing their lawful right. Therefore, in the given sets of the facts there did not appear a chances of irreparable loss to the plaintiff, which can not be compensated in terms of money. Further in view of distinguishable facts and circumstances of the case Honble Authority cited supra can not be applied to the facts of the present case. Considering the above discussion, plaintiff did not establish balance of convenience and chances of irreparable loss in his favour. Hence, considering the facts and circumstances of the case both these points goes against the plaintiff. Accordingly point no. 2 and 3 are answered in negative.

**AS TO POINT NO. 4**

16. In view of the findings given to points no. 1 to 3 the application deserves to be rejected. Hence, in answer to the point no. 4, I am inclined to pass the following order.

**ORDER**

1. Application Exh.5 is rejected.
2. Costs in main cause.

(Dictated and pronounced in open Court).

Date:- 07.05.2024

(Ms. Trushna G. Bansod)  
Jt.Civil Judge (Jr.Dn.)  
Manora.

**CERTIFICATE**

I affirm that the contents of this PDF file Judgment/Order are same word to word as per the original Judgment/Order.

|                                                   |   |                                                 |
|---------------------------------------------------|---|-------------------------------------------------|
| Name of the Stenographer                          | - | Smt. R. K. Chavhan(L.G.)                        |
| Court                                             | - | (Smt. T. G. Bansod)<br>Jt. CJJD & JMFC, Manora. |
| Date of Judgment/Order                            | - | 07/05/2024                                      |
| Judgment/Order signed by the Presiding Officer on | - | 07/05/2024                                      |
| Judgment/Order uploaded on                        | - | 09/05/2024                                      |