


MHWS100004902020 	<u>ORDER BELOW EXH.05 IN R.C.S.NO.25/2020</u> (Madan Sitaram Lade Vs. Bhagwan Pralhad Lade) <u>(Dated : 22nd June-2023)</u>
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1. This is an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 for grant of temporary injunction restraining the defendant from causing obstruction and interference in the peaceful possession of the plaintiff over the suit property.
2. Defendant has filed his written statement at Exh.13 and pursis at Exh.15 to treat the same as say to this application. Heard both sides at length.
3. Considering the rival submissions of parties, the following points arise for my determination and I record my finding thereon for the reasons given below :-

<u>Sr.No</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the plaintiffs have made out a <i>prima-facie</i> case in their favour ?	No.
2	Whether balance of convenience tilts in favour of the plaintiffs ?	No.
3	Whether the plaintiffs will suffer irreparable loss in the event of refusal of injunction application ?	NO.
4	What order ?	Application is rejected.

REASONS

4. The plaintiffs in support of their claim filed 7/12 Extract, Mutation Entry No.827, Sale Deed No.423/2023, Per-contra, defendant in support of his averment filed copy of Sale Deed bearing No.1492/1974, Application for measurement of the suit property by the plaintiff No.1, Village Namuna No.8-A in the name of each plaintiff, Affidavit of the plaintiff No.1 and plaintiff No.2 filed in R.C.S.72/2010, application by the defendant to the Talathi for correction of his entry in 7/12 Extract, 7/12 Extract of Gut No.3, Rough Sketch Map, Namuna No.8-A, Affidavit in lieu of examination in chief in Gulab Lade filed in R.C.S. No.72/2010, Mutation Entry No.1028, 7/12 Extract of Survey No.1/2, Measurement Map by cadastral surveyor of Gut No.175 .

AS TO POINT NO.1 :-

5. The learned advocate for the plaintiffs submitted that, the land of defendant is situated in Gut No.3. Defendant has no right in the Gut No.175. The plaintiffs are in possession of the suit property, it is their ancestral property. Hence, prayed to restrain the defendant from causing obstruction and interference in their peaceful possession.

6. Per-contra, the learned advocate for defendant submitted that as per the contention of the plaintiff that the mutation entry is 827. But, on perusal of 7/12 extract it appears that, the mutation entry No.826 has been mentioned before the name of plaintiff Nos.1 and 2. There is overwriting in the mutation entry No.827. Even, the plaintiffs have mentioned wrong four boundaries. The grandfather of defendant had purchased the 6 R land from one Gulab Lade. On perusal of sale

deed it appears that, the land of plaintiffs is situated towards eastern side. The plaintiffs have not shown how they are in possession of the 054 R land. It is mentioned that each plaintiff has share of 18 R land. In fact, the revenue record shows that each plaintiff has 0.06 R land in their possession. Therefore, prayed to reject the application.

7. In reply to the argument of defendant, the learned advocate for the plaintiffs submitted that, the mutation entry No.827 if perused then at the bottom of copy, it is noted that the mutation entry has been corrected in the computer. If the sale deed of the father of defendant has been executed in the year-1974 then why there is no any revenue record. It is admitted fact that survey No.1/2 is the now Gut No.75. The rough sketch map filed by defendant shows the wrong four boundaries. The sale deed executed by legal heirs of Dilip Lade and Gulab Lade in favour of Shubham Bhalerao Lade shows that land of plaintiffs are situated towards the eastern side of land of Dilip Lade and Gulab Lade. Therefore, the land of plaintiff are situated in the Gut No.175. The defendant has no concern with Gut No.3. Hence, prayed to allow the application.

8. Before the discussion on merit, it is necessary to mention the Judgment of the **Hon'ble Supreme Court** in the case of the **Dalpat Kumar & Another Vs. Prahlad Singh & Others Reported In (1992) 1 SCC 719** wherein it was held that :-

"The grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act , on the fact before the court, there is probability of his being

entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial, and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it. Therefore, the burden is on the plaintiff to evidence aliunde by affidavit or otherwise that there is "a prima-facie case" in his favour which needs adjudication at the trial. The existence of the prima-facie right and infringement of the enjoyment of his property or the grant of temporary injunction. Prima-facie case is not to be confused with prima-facie title which has to be established, on evidence at the trial. Only prima-facie case is a substantial question raised bonafide, which needs investigation and a decision on merits. Satisfaction that there is a prima-facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused by the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the court has to exercise its sound judicial discretion in granting or refusing the relief of ad-interim injunction pending the suit."

9. The term *prima-facie* case means a case which involves a fair and substantial question to be tried. A triable issue is the crux of the expression *prima-facie* case.

10. Perused the record in this case, the only question is whether the plaintiffs are in possession of 0.54 R land in Gut No.175. On perusal of 7/12 extract of Gut No.175 it shows that the plaintiff Nos.2 and 3 have their names in 7/12 extract for the area of 0.18 R land. Their names appeared as per the mutation entry No.826. The plaintiffs have not filed the mutation entry No.826 on record. The 7/12 extract also shows that the name of the Madan Lade and one Asrabai Navghare appears. Their name also recorded as per mutation entry No.30. The mutation entry No.30 is also not filed on record. Moreover, 0.18 R land is common in plaintiff No.1 Madan and one Asrabai. The said Asrabai is not the party to the present suit.

11. On the contrary, the 7/12 extract filed by defendant shows that, plaintiff Nos.1 to 3 are in possession of only 0.18 R land. Though, it is submitted that the corrections have made in the computer then also the corrected copies are not filed on record. Even the 7/12 extract shows contrary to their pleading. The 7/12 extract shows the entries are as per mutation entry No.826. It is principle of law that "A person who seeks equity must come with clean hand". In this case, plaintiff has not come with clean hand. The defendant has filed old revenue record. As per old revenue record, each plaintiff had 0.06 R land. In such situation, the plaintiffs have to establish how their area has been increased. Plaintiffs failed to establish they are in possession of 0.54 R land by filling the

documents on record.

12. On perusal of the map filed by defendant it reveals that the area in possession of the plaintiff No.1 differs from the area mentioned in 7/12 extract of Gut No.175. Moreover, on perusal of sale deed executed by the Gulab Lade in favour of Tulashiram Lade shows the land of defendant in Gut No.175 to the extent of 0.06 R land. The land of defendant is situated in Gut No.175 but plaintiffs have not shown them in Gut No.175. Though, his name is not recorded in revenue record but he filed an application before Talathi for correction of his name in revenue record. The question of location of defendant in Gut No.175 is the matter of fact. It requires full fledged trial. There is no document placed on record which shows how the plaintiffs are in possession of 54 R land and how their area has been increased than the old revenue record. *Prima-facie* the document placed on record are not sufficient to hold that the plaintiffs are in possession of the suit property.

13. Hence, I find that no *prima-facie* case is made out in favour of the plaintiff. In the back drop, the point No.1 is answered in the negative.

AS TO POINT NO. 2 & 3 :-

14. Having answered that there is no *prima-facie* case, in answer to point Nos.2 and 3 of the judgement of **Hon'ble High Court of Bombay** in **Bhavna Vs. Navneet reported in 2015(3)MHLJ 472** assumes importance. In para 8 therein, his Lordships has observed that, "Once the prima-facie case is not established, the further aspects as to

balance convenience and irreparable loss are immaterial and they need not be considered.” In this view of the matter, point Nos.2 and 3 does not survive and are answered accordingly.

15. In this backdrop and in answer to point No.4, the following order is passed.

ORDER

1. Application is rejected.
2. No order as to cost.
(Dictated and pronounced in the open Court)

Place : Malegaon
Date: 22.06.2023.

(Pravin U. Kulkarni)
Jt. Civil Judge (J.D.) Malegaon
Dist. Wahim.

CERTIFICATE

I affirm that the contents of this P.D.F file Order is same word to word, as per the original Order.

Name of Stenographer : **Shivam B. Patange (L.G.)**

Name of Court : P.U.Kulkarni
Jt. C.J.J.D. and J.M.F.C., Malegaon.

Date of the Order : 22.06.2023

Order Signed by : 23.06.2023

Presiding Officer on

Order Uploaded on : 23.06.2023