

MHWS100009772019



ORDER BELOW EXH.15 IN RCS No.55/2019

(Sahil @ Sairam Tekale Vs. Narayan Tekale)

(Date : 05th January-2023)

1. This is an application under Order XXXIX Rule 1 and 2 of Civil Procedure Code for restraining the defendants from causing obstruction and interference over the suit property situated at Dapurikalve. Property number of suit property is 302 (Hereinafter referred as the suit property) till the disposal of the suit. Defendants filed their say at Exhibit-12.
2. Considering the rival pleadings 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 plaintiff has made out <i>prima-facie</i> case ?	...Yes.
2.	Whether balance of convenience lies in favour of plaintiff ?	...Yes.
3.	Whether plaintiff will suffer irreparable loss, if injunction is refused ?	...Yes.
4.	What order ?	As Per Final Order.

REASONS

3. Plaintiff in support of his claim produced village Namuna No. 8-A below list Exh.4 and copy of agreement below list Exh.19. Plaintiff in support of his claim filed affidavit of Gajanan Tulshiram Kalave and Shalikram Ramchandra Kalave. Defendants supported his claim by filing

village Namuna No.8-A of Property No.281 and Property No.281 and Property No.302 below list Exh.14. Defendants also filed village Namuna No.8-A of Property No.142 below list Exh.16. Defendant in support of his claim also filed affidavit of one Zhanak Ganeshrao Nayakwal.

4. Heard learned advocate for the plaintiff and defendants.

AS TO POINT NO.1 TO 3 :-

5. It is the claim and submission of the plaintiff that defendant No.1 his step brother of plaintiff and the defendant No.2 is the wife of the defendant No.1. The father of plaintiff and the defendant No.1 made partition of the suit property. The suit property came to the share of plaintiff. Since then plaintiff is in possession of the suit property. The defendant No.1 is towards the southern side of the plaintiff. Plaintiff and the defendant No.1 both have entered into an agreement. As per agreement, it was agreed that the road is left for the use of the defendant No.1. But on 24.04.2019 defendant No.1 has obstructed the plaintiff. Hence, this suit.

6. It is the case and submission of the learned advocate for the defendant that the father of plaintiff and the defendant No.1 made partition of agricultural land but the suit property had orally partitioned. The father of plaintiff and the defendant No.1 have orally given the vacant site of property No.302 to the defendant No.1. The defendants have denied the obstruction by them. The defendants have filed copy of registered partition deed which includes agricultural land. Hence, prayed to reject the application.

7. The plaintiff and defendants both have filed affidavits in support of their claim. As per affidavits from the side of plaintiff it appears that the plaintiff is in possession of the suit property. As per affidavit from the side of defendants it appears that the suit property has not been mentioned in the partition deed.

8. In the present case, the most crucial documents is the agreement executed by the defendant No.1 on perusal of the documents defendant No.1 agreed that he will not interfere in the possession over the suit property. On perusal of agreement it appears that the road left is for the use of plaintiff and defendants. The agreement shows that plaintiff is in possession of 23x32 feet of over plot No.302 i.e. suit property.

9. The road 8x32 feet is the road in property No.302. Though there is no partition of the property No.302, but the agreement shows that the defendant No.1 admitted that the possession of the plaintiff over the property No.302 to the extent of 23x32 feet. There is nothing on record from the side of defendants which shows that the road is not in property No.302. Therefore, *prima-facie* it appears that defendant has no right to obstruct the plaintiff. The plaintiff has right to enjoy the possession over the property No.302. If defendants are not restrained then plaintiff may suffer irreparable loss and it will also inconvenient for the plaintiff to enjoy his possession. Thus, balance of convenience and irreparable loss tilts in favour of plaintiff. Hence, I answer point Nos.1 to 3 in affirmative.

AS TO POINT NO.4 :-

10. In view of the above discussion and findings thereon. I pass the following order.

ORDER

1. Application is allowed.
2. Defendants are restrained from causing obstruction and interference in peaceful possession of plaintiff over the suit property till disposal of the suit property.
3. No order as to cost.
(Dictated and pronounced in open Court).

Date : 05.01.2023

Jt. Civil Judge Junior Division
Malegaon.

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 the Stenographer : **Shri. Shivam B. Patange (L.G.)**

Court & Judge Name : P.U.Kulkarni,

Jt. C.J.J.D and J.M.F.C, Malegaon.

Date of Order : 05.01.2023.

Order signed by the

Presiding Officer on : 07.01.2023.

Order uploaded on : 07.01.2023.