

ORDER BELOW EXH.05

The plaintiff filed suit for permanent injunction against the defendant i.e., Municipal Council Pusad. In this suit he filed an application under Order 39 Rule 1 & 2 and Section 151 of the Code of Civil Procedure. The suit property is situated in Municipal Council premises, Balaji Ward, near old Government Hospital area, to the extent of 17 Sq.ft. X 12 Sq.ft. total area 204 Sq.ft. in the name and style as "Shankar Dalve". The four boundaries of the suit property are towards East: Santoshi Mata to Manik Talkies North South Road, towards West: Open Space of Government Hospital, towards North: Pan Masala Shop of Chandrakant Tagadpallewar, towards South: foot shop of Hira Korde.

2] In the application it is submitted that the plaintiff is in possession of the suit property since long. The grandfather of plaintiff namely Satwaji Dalwe was doing the business of cleaning and repairing teeth. Thereafter in the year 1951 the grandfather was expired and the father of plaintiff Sambhaji started the same business until the year 1985. Thereafter plaintiff is doing same business from the suit premises from the year 1985. According to the plaintiff he is doing the business in the suit premises from last 35 to 37 years without any disturbance from anybody. He took electricity connection on the said premises. Thereafter firstly on 12.01.2020 then on 09.03.2021 and recently on 06.01.2022 the defendant Municipal Council issued notices for removal of encroachment of the plaintiff from the suit premises. Therefore, it is the prayer of the

plaintiff that he is in settled possession of the suit premises and hence by way of granting temporary injunction his possession may kindly be protected.

3] The defendant appeared on service of notice and filed written statement vide exh. 13 and filed pursis below at Exh. 14 to consider the written statement as say to this application. According to the defendant the Municipal Council is the owner of the suit premises and the plaintiff cannot claim temporary injunction against the true owner. The plaintiff, his father or his grandfather is not at all having any relation with the suit premises and therefore the plaintiff have no right to file the present application against the defendant. According to the defendant the Municipal Council never handover or allotted the suit premises to the plaintiff and the plaintiff is having its forceful possession by way of encroachment without any right and therefore it is illegal possession. Accordingly, the defendant prayed that the application of the plaintiff for temporarily injunction may kindly be rejected.

4] On perusal of pleading the following points arise for determination and I record my findings thereon with reasons as follows-

Sr.No.	Points	Findings
01.	Whether plaintiff is having prima-facie case?	In the Negative.
02.	Whether balance of convenience lies in the favour of plaintiff ?	In the Negative.

03.	Whether plaintiff will suffer irreparable loss if application is rejected ?	In the Negative.
04.	What order ?	Application is rejected.

REASONS

As to point No. 1 to 3:

5] In support of application plaintiff has placed on record the copy of notices issued by the defendant to him, copy of electricity bill, copy of tax receipt of Liyakat Ali. On the other hand, the defendant did not file any document on record.

6] Heard Shri. B.M.Kapate Ld. Counsel for the plaintiff and Shri A.A.Khan Ld. Counsel for the defendant. The Ld. Counsel for the plaintiff urged that the plaintiff is in possession of the suit property from his forefathers. He is running his business on the suit premises. According to him the plaintiff is in undisturbed settled possession since long and till today the defendant never obstructed the possession of the plaintiff. He further urged that the plaintiff is having long standing possession over the suit premises and presently the defendant is not in urgent requirement of the suit premises. He is ready to vacate the suit premises whenever the defendant proposed for any construction on the suit premises. Therefore, he prayed that his application for temporary injunction may kindly be allowed and his possession may kindly be protected till decision of the suit. In support of his claim, he filed following case laws

1] Rame Gowda (D) by Lrs. V/s. M. Varadappa Naidu (D) by Lrs.

Decided on 15.12.2003

2] Baban Anantrao Naik V/s. Pramila Uttamrao Yenare and others reported at 2011 (6) All M.R. 15.

7] On the other hand the Ld. Counsel for defendant Shri A.A. Khan urged that the plaintiff cannot claim temporary injunction against the true owner. The defendant is in requirement of the suit premises for development purposes. According to him in order to get temporary injunction, mere possession is not sufficient and it should have legal base. He further submitted that the Municipal Council is proposing to construct shopping complex on the said premises which will be for the benefit of general public. According to him if the injunction is granted in favour of plaintiff, then it will be irreparable loss not only to the defendant but also to the general public. According to him the possession of plaintiff is encroachment and hence it cannot be protected. In support of this contention, he filed case law Hon'ble Bombay High Court i.e., Municipal Council Pusad V/s. Kundanlal Mohanlal Jaiswal and others reported at 2007 (3) Mh.L.J. 155.

8] Perused the materials available on record. It is the claim of the plaintiff that first of all his grandfather came into the possession of the suit premises as he was doing the business of cleaning of teeth. Thereafter his father was running same business on the suit premises and presently from the last 35 years the plaintiff is running the said business on the suit premises. Therefore, he is in requirement of the suit premises for doing his business. Interestingly

the plaintiff has not mentioned the exact location or plot number of the suit premises. The description of the suit premises is general and not accurate. More particularly he has not filed single document to show his possession on the suit premises. Apart from long possession, such person has to establish some legal right in his favour to enable him to obtain temporary injunction during pendency of suit. Therefore, it is necessary to see as to how the plaintiff came into the possession of the suit premises and the source of his possession. The plaintiff did not plead anything in respect of how he came into the possession of the suit premises. Therefore, it can be said that plaintiff is in encroachment on the premises belonging to the Municipal Council. It is not the case of the plaintiff that the defendant allotted the suit premises to him or it is not his case that he is tenant over the suit premises. At this stage, prima facie, the defendant/Municipal council is the owner of suit property. Therefore, it shows that the plaintiff is in encroachment of the suit premises from the beginning. The plaintiff has not entered on the suit premises by any of the legal means and his possession on the suit premises is itself illegal. It is the settled law that one cannot claim injunction against the true owner. Even though if it is admitted that plaintiff is doing his business since long but he cannot claim possession on encroached land for running his business.

9] The Hon'ble Apex Court in the case of Jagpalsing and others V/s. State of Panjab (Reported) decided on 28.01.2011 had given directions to all the State Governments in the country that they should prepared scheme for eviction of illegal or unauthorized

occupants of Gram Sabha/ Gram panchayat land and these must be restored to the Gram Sabha / Gram panchayat, use of villagers of the village. The said scheme should provide speedy eviction for such illegal occupation or huge expenditure in making construction thereon for political connection must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Therefore, in the present case the Municipal Council is being the local body is under obligation of the directions issued by Hon'ble Apex court in this case. Hence the notices issued by the Municipal Council are legal one.

10] Hence as discussed above the possession of the plaintiff is not lawful and he has not entered the suit premises by any of the legal means. His possession itself is illegal and it is encroachment on the land owned by the local body. His possession is causing obstruction to the development project of the local body i.e., Municipal Council and possession which is prima-facie illegal cannot be protected. The Ld. Counsel for the plaintiff urged that the defendant has not filed any document to show its ownership. However, the plaintiff in his pleading itself mentioned that the suit property is situated in the Municipal Council premises. Therefore, when it is the case of plaintiff that he is encroached upon land belonging to the Municipal Council then it shows that suit property is situated on Municipal Council land. Further the electricity bill issued by the electricity board will not be the basis of legal possession.

11] In the case of Ramegowada (Supra) The Hon'ble Apex Court held that, "It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by catena of decisions". In that case the suit was based on title and the plaintiff failed in proving his title and the real dispute was about the demarcation of the boundaries of the two pieces of land. The defendant was claiming that the land formed part of his property and was owned by him. However, in the present case there is no dispute as to be title of the land and the plaintiff is in encroachment since beginning on the land belonging to the local body. Therefore, the plaintiff cannot claim that being encroacher he is in settled possession.

12] Further in the case of Baban Naik (Supra) The appellant has instituted suit for specific performance of contract and declaration of cancellation of sale deed and in that suit the plaintiff came to the possession on the basis of agreement between the parties. However, in the present case the plaintiff is in possession without any such legal authorization.

13] In Municipal Council V/s. Kundanlal(Supra) the Hon'ble High Court that observed that, "Court while extending any protection to such person who is alleged to have committed encroachment, has to record of finding of legal right in his favour. Mere plea that he is in possession and therefore his encroachment needs to be protected

can be of no assistance because on the basis of such plea he cannot ultimately succeed in his Suit. If final relief itself cannot be granted on such plea, it is apparent that no interim relief also can be sustained by it. Thus apart from long possession, such person has to establish some legal right in his favour to enable him to claim temporary injunction during pendency of suit.” The facts of the case and the present case are similar to each other.

14] Hence, as discussed above, the plaintiff failed to prove that he is having prima-facie case in his favor. There is no balance of convenience in favour of plaintiff and if the injunction is granted then there will be irreparable loss to the defendant. Hence, I answer point No. 01 to 03 in the **Negative** and proceed to pass following order-

ORDER

- 1] Application Exh. 05 is rejected.
- 2] Costs in cause.

Dt.12.04.2022

(A.D.Margode)
2nd Joint Civil Judge Jr. Dn.
Pusad.