

MHYA050024242022

**Order below Exh. 11 in RCS No.106/2022**

(Mohan V/S Uttam and others)

In the present suit defendant No. 1 has filed counter claim at exh. 10 and also through this application plaintiff (defendant No. 1) is praying for grant of temporary injunction restraining defendants no. 1 to 3 not to disturb the possession of plaintiffs to the extent of 1 H 13 R of land survey No. 204 situated within four boundaries as mentioned in the plaint para No.1 at village Lakhi, Taluka Pusad District Yavatmal which is hereinafter mentioned as the 'suit property'. (For the sake of brevity)

2) The germinating facts of this litigation are as under :

The Plaintiff (defendant no.1) pleaded that, the suit property is ancestral property belonging to the plaintiffs family, granted to the plaintiff in partition. Since the land was divided in 1987, the plaintiff has been cultivating it, and, since then, has been using the land to grow soyabean, pigeon pea, and other crops which serve as a primary source of income and livelihood for the plaintiff and his family. As per the usual practice, the plaintiff sowed soyabean and pigeon pea crops in June 2022 on the suit property.

3) Plaintiff (defendant No. 1) further pleaded that, defendant has no right nor does he have any possession over the

suit property. The plaintiff and defendant are siblings, and during the partition process, the lands in each sibling's possession were allocated to them individually. Despite this partition, the 7 x12 extracts is still in the defendant's name.

4) Originally, suit land was recorded in the name of Babulal Fulsing Chavhan, the brother of the plaintiff and defendant, but the defendant managed to have his name recorded for the land. In contrast, another piece of land that, was actually in the plaintiff's possession ended up under the name of Babulal Fulsing Chavhan, however, practically, the plaintiff's possession of the suit land remains intact, despite the village record being in the defendant's name .

5) Plaintiff (defendant No. 1) further pleaded that, he and the plaintiff are real brothers, and they never officially recorded the land according to their possession in the revenue records. The plaintiff requested that, the defendant officially transfer the land to the plaintiff's name, and local council was called to resolve this issue. However, the defendant refused, taking advantage of the fact that, the land was officially in his name, which led to greed. He denied the plaintiff's request to transfer the land in front of the council, threatened the plaintiff, and challenged him about accessing the land.

6) The defendant filed a suit against the plaintiff (defendant No. 1), and the plaintiff received a notice of this on 25.07.2022. On 26.07.2022, while the plaintiff (defendant No. 1) and his family were

working on the suit land, the defendant arrived and obstructed their peaceful possession and use of the land. The defendant warned the plaintiff (defendant No. 1) to vacate the land, stating that, he had filed a suit, and threatened to harm the plaintiff if he or his family accessed the suit land in any way.

7) The plaintiff (defendant No. 1) further, pleaded that, due to the defendants hostility, the plaintiff (defendant No. 1) was compelled to filed a counter claim. The suit land was allocated to the plaintiff (defendant No. 1) through the partition and he has been in possession of it, having even sown crops this year. Despite this, the defendant is attempting to deprive the plaintiff (defendant No. 1) of his rightful possession and ownership by exploiting fact that, the land is recorded in his name. If the court grant injunction in favor of the plaintiff (defendant No. 1) the defendant will suffer no loss, if not granted, it would severally harm the plaintiff's (defendant No. 1) rights.

8) On the other hand original plaintiff resisted the present application by filling his say at exh. 20 and opposed the same. He further contended that, defendant no. 1 has filed counter claim which is frivolous claim against the plaintiff of this suit, causing unnecessary harassment. The counter claim by the plaintiff (defendant No. 1) in this case has been filed with malafide intention, as defendant No. 2 in the original suit is not the plaintiff. This baseless counter claim has been filed by an unrelated and aggrieved person, which is not permitted under the law. Therefore,

on this preliminary ground itself, the counter claim is liable to the dismissed. Originally, the suit property was allocated to defendant No. 1 (originally plaintiff) in this counter claim as per mutation entry no. 2039 dated 22.12.1978. This land was distributed by their father, since then, defendant No. 1 (originally plaintiff) has been in possession and cultivation of this land.

9) The plaintiff (defendant No. 1) in the counter claim and their family members already possess substantial agriculture land in Lakhi Tq. Pusad including survey no. 597 area 4 H 13 R, survey No. 431 1 H 28 R, survey No. 152 4 H 10 R, (Including 2 Acre) in the name of the plaintiff's (defendant No. 1 son Pravin), Survey no. 205 area 2 H 9 R, Survey No. 83 1 H 62 R, in the name of the plaintiff's on (defendant No. 1) Pawan Mohan Chavhan. Altogether, they have approximately 24 acres of agriculture land.

10) Despite this, the plaintiff (defendant No. 1) in the counter claim is no mentioned and filed this counter claim only to harras the elderly defendant No. 1 (originally plaintiff) with intention of unlawfully acquiring their land.

11) On 21.06.2022 at around 11.00 a.m. defendant No. 1 (originally plaintiff) and his wife Kamala were inspecting their crops when the plaintiff (defendant No. 1) in their counter claim and his son entered the field abused, pushed, and threatened to kill defendant No. 1 (Originally plaintiff). Subsequently, he filed criminal case No. 177/2022 in the Judicial Magistrate First Class U/s 294, 323, 506 and 34 of the I.P.C. in this case the court has issued

summons against the plaintiff (defendant No. 1) and his two sons U/s 323 of the I.P.C.

12) Since, defendant No. 1 (originally plaintiff) has been in undisputed possession of this land since, 1978, and the counter claim has no legal basis, it is liable to be dismissed as it violate the rights of the defendant No. 1 (Originally plaintiff) in this case.

13) Heard learned Advocate for the plaintiff and learned Advocate for the defendants at length. Considering the rival contentions of the parties and documents on record, the following points arise for my consideration for the determination of this application and I have recorded my findings thereon with the reasons given there below.

POINTS**FINDINGS**

1) Does the plaintiff has a prima facie case to grant temporary injunction as prayed ?

NO

2) Whether the balance of convenience lies in favor of plaintiff ?

NO

3) Whether the plaintiff will suffer irreparable loss in the event of not granting temporary injunction ?

NO

4) By what order ?

**Application at exh. 11
is rejected**

REASON

The plaintiff (originally Defendant No. 1) has filed the following documents to support his case:

1. 7/12 extracts:

- Gut No. 597 (Defendant No. 1)
- Gut Nos. 203, 152, 207, 208, 434, 204, and 206

2. Gaon Namuna No. 8A:

- Related to Gut Nos. 597, 203, 208, and 434

3. Mutation Entries:

- Gut Nos. 152, 203, 208, 434, 204, and 206

4. Additional Records:

- Gaon Namuna No. 7B of the suit property
- Copy of a *Pera Panchnama* dated 27.09.2023

5. Affidavits:

- Babarao Sadashiv Chavhan (Exh. 23)
- Sudhakar Babulal Chavhan (Exh. 24)
- Umesh Sahebrao Chavhan (Exh. 25)
- Arunabai Ramrao Rathod (Exh. 26)
- Pravin Mohan Chavhan (Exh. 30)
- Bhimrao Maroti Chavhan (Exh. 31)

6. Orders from Tahsildar, Pusad:

- Dated 15.03.2024, 17.02.2023, and 25.10.2023

7. Statement:

- Recorded by the police on 26.10.2023

The defendant (originally the plaintiff) has also submitted the following:

1. Certified Copies:

- 7/12 extract of the suit property
- Gaon Namuna No. 8A

2. Written Complaint:

- Filed with the Gramin Police Station

3. Additional Documents:

- M.C. Report dated 22.06.2022
- Copy of mutation entry of the suit property
- Appeal filed before the SDM, Pusad, dated 18.06.2024
- Crop insurance documents dated 08.07.2021, 21.07.2022, 13.07.2023, and 14.07.2024
- Color photocopy of relevant documents dated 27.09.2024

14) The Ld. Advocate of defendant No. 1 (Originally plaintiff) also relying of the Authority of Hon'ble Supreme Court which is discussed at appropriate stage.

As to Points No.1 to 3 are interlinked therefore I am discussing them collectively :

15) It is pertinent to mention that in the original suit, the plaintiff initially filed a temporary injunction application, which is at

Exhibit 5. The contentions of the defendants were thoroughly considered, and the said application was allowed. The present temporary injunction application has been filed by Defendant No. 1 in the counterclaim concerning the same suit property.

16) As already stated, for deciding a temporary injunction, the plaintiff must establish a *prima facie* case and need not delve into the merits of the suit. In the present application, the plaintiff (Defendant No. 1) has submitted that the suit property is solely recorded in the name of Defendant No. 1 (originally the plaintiff) in the 7/12 extracts of the property. However, they claim that the suit property has been under their possession for a long time, and they have been cultivating it to date.

17) To substantiate this claim, the plaintiff (Defendant No. 1) has filed evidence affidavits from neighbors of the suit property, along with a copy of *Gaon Namuna No. 7-B*. Additionally, a copy of the order from the Pusad Tehsil Office has been submitted to demonstrate that the plaintiffs (originally the defendants) have been cultivating the suit land to date.

18) The plaintiff (originally Defendant No. 1) submitted that his father had allotted the suit property to him during partition. However, due to the aforementioned reasons, their names were not added to the 7/12 extracts of the suit property. Despite this, he claims to have taken possession of the property at the time of the partition among all siblings.

19) On the other hand, the original plaintiff, to prove his possession, has submitted crop insurance documents. Upon examination, it is evident that the original plaintiff has been cultivating soybean on Survey No. 204. Furthermore, the records *prima facie* show that since 2004–05, the name of the original plaintiff has been mentioned in the *Pera Patrak* of the suit property. Another significant fact is that mutation entries have been recorded in the name of the original plaintiff for a considerable period. The mutation entry indicates that after the partition carried out by the deceased Fulsing Chavhan, the original plaintiff's name was recorded in the 7/12 extracts of the suit property.

20) Considering all the facts, the plaintiff (Defendant No. 1) contends that he is in possession of the property and that the original plaintiff is disturbing his possession. However, to establish a *prima facie* case, the plaintiff (Defendant No. 1) has not submitted any supporting documents, such as police complaints or any written complaints filed with any authority.

21) In contrast, the original plaintiff has filed an N.C. (Non-Cognizable) report against the plaintiff (Defendant No. 1), which indicates that the plaintiff (Defendant No. 1) has disturbed the possession of the original plaintiff. Therefore, after evaluating all the facts and circumstances, it appears that the contention of the plaintiff (Defendant No. 1) can only be considered upon adducing evidence. However, at present, the plaintiff (Defendant No. 1) has

not established a *prima facie* case in his favor.

22) The Ld. Advocate of the originally plaintiff relied on the authority of **Hon'ble Supreme Court of India Anathula sudhakar Vrs. P.Bucchi Reddy (Dead) by Lrs. And others. (2008) AIR (S.C.W) 2692.** it is held that, "*the suit for permanent injunction without seeking declaration of title was not maintainable on the facts of the case. The general principal as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and or possession with injunction as a consequential relief.*"

23) After considering the *supra* authority, it is evident that the facts of the present case are distinguishable. In the current suit, the plaintiff (Defendant No. 1) claims that the original plaintiff has disrupted his possession of the suit property. Both parties have asserted that the suit property came into possession through a partition carried out by their father. However, another notable fact is that only mutation entries are recorded in the name of the original plaintiff, whose name also appears in the 7/12 extracts of the suit property.

24) The question raised by the learned advocate for the original plaintiff can only be appropriately addressed after evaluating the evidence presented by both parties. Hence, it is respectfully submitted that the cited *supra* authority is not applicable at this

stage.

25) Consequently, the plaintiff (Defendant No. 1) has failed to establish a *prima facie* case in his favor. On the contrary, the original plaintiff has succeeded in demonstrating a *prima facie* case. Based on the documents on record, it is *prima facie* evident that the balance of convenience and the risk of irreparable loss lie in favor of the original plaintiff, as he has proven his possession of the suit property.

26) Therefore, the plaintiff (Defendant No. 1) has not succeeded in proving a *prima facie* case in his favor. As a result, I am inclined to pass the following order:

Order

- 1] Application at exh. 11 is hereby
rejected
- 2] Cost in cause.

Date : 06.01.2025

(Z. Z. Quadri)
6th Civil Judge, (Jr.Dn)
Pusad