

Order below Exh.172

1. This suit is for removal of encroachment and for the recovery of possession and for perpetual injunction. The plaintiff's land is described in detail in plaint which is an open land situated adjoining to the land of the defendant. The plaintiff, in the plaint alleged that on 20.04.1990 the defendant encroached upto 18x285 meter upon the plaintiff's land for which the defendant pierced stones. In the written statement the defendant submitted that the disputed land is owned by him and he has not made any encroachment.

2. The instant application i.e. Exh.172 is moved by the plaintiff on 25.06.2015 for grant of temporary injunction against the defendant. The plaintiff alleged that now the defendant has erected wire fencing to cover the disputed land. The plaintiff in this application further pleaded that he got the information that the defendant is about to develop (construction) the disputed land with the motive to transfer it to different people. It is for this reason the plaintiff in this application prayed that the defendant shall be temporarily restrained for making any further development and as well as remove the wire fencing.

3. In reply the defendant has not disputed the fact of erection of wire fencing but he disputed the fact of planning of development and the fact of transfer of disputed land.

4. The following point do arise for my consideration and I have given my findings each of them for the reason given as below:-

Sr.No.	Points	Findings
1	Does the plaintiff prove that it has prima facie case ?	Not proved
2	Does the plaintiff prove that it will suffer irreparable loss if the temporary injunction not granted ?	Not proved
3	Does the plaintiff prove that the balance of convenience is lies in its favour ?	Not proved
4	What order ?	As per final order.

REASONS

As to point no.1 to 3:-

5. Heard both the side at length and considered the argument.
6. It appears that this application is under Order-39 Rule-1 of the Code of Civil Procedure which is as under:-
 1. Cases in which temporary injunction may be granted.- Where in any suit **it is proved by affidavit or otherwise-**
 - (a) that any property in dispute in a suit in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
 - (b) that the defendant threatens, or intents, to remove or dispose of his property with a view to defrauding his creditors,
 - (c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sell, removal or disposition of the property

or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further order.

7. The plaintiff expressed fear that the defendant will develop the disputed land and thereafter will transfer the same to different people. But the question is as to whether it is proved that the defendant is about to develop the disputed land? In this application the plaintiff only alleged that he got some information about the planning of defendant to develop the disputed land. It is not the case of the plaintiff that the defendant has brought the materials required for construction on the disputed land. Thus prima facie it seems to me that there is no sign at all on the disputed land by which one can say that the defendant is about to develop the land. Development of the land cannot be done secretly. Land's development is always subject to public view.

8. It is true that earlier there were marked stones to show possession of the defendant on the disputed land and as on today said area is covered by wire fencing. Erection of wire fencing is not pre-judicial to the plaintiff's interest. The purpose of wire fencing is only to show the area under possession and not more than that. So the erection of wire fencing is not sufficient so as to prove that the defendant has developed or will develop the disputed land.

9. Thus the fact of planning of development on disputed land is not proved. Thus damage to the disputed land or damage to the plaintiff's

interest is also not proved. It is also noteworthy that since the year 1990 till today the defendant has not developed the disputed land nor alienate the same. Thus, there is nothing on record which shows that the defendant is about to alienate any part of the disputed land. Apart from this the plaintiff's interest is already protected under the principle of lis-pendens. Therefore, there is no prima facie case to the plaintiff so as to grant of the temporary injunction. It is for this reason dismissal of this application will not cause irreparable loss to the plaintiff. There was no just cause to the plaintiff to file the instant application and thus it cannot be held that the balance of convenience lies in favour of the plaintiff. Hence, I answer point no.1 to 3 in negative and with reference to point no.4 the application is liable to be dismissed. Hence the following order.

Order

The application is dismissed.

Date:22/11/2016

(Ketankumar Telgaonkar)
Jt.Civil Judge (Jr.D.N.)
Darwha