

CNR-MHYA110001002023



Order Below Exh. 05 and 17 in R.C.S. No. 03/2023

01. The suit is filed for injunction by the plaintiff against the defendants and the defendants have filed counter-claim for injunction against the original plaintiff. The plaintiff at Exh. 5 and defendant at Exh. 17 have filed applications for interim relief under Order 39 Rule 1 & 2 of C.P.C. 1908, that other side should not obstruct their possession over the suit-property. Defendants have filed his say to Exh. 05 below Exh. 14. The original plaintiff has filed his say at Exh. 18 for the counter T.I. application Exh. 17 of original defendant.

Brief facts of the application are as follows:-

02. It is the case of the plaintiff that, the property bearing land survey No. 171 admeasuring 01 H. 54 R out of which North side land at village Krushnapur having boundaries East- Hardada Krushnapur road, West- land of Kerba Jalke, North- Gavthan new vasati and South- land of defendant No. 1 is the subject matter of the suit-property.

03. That the plaintiff and defendant No. 1 are real brothers. Defendant No. 2 is the sister-in-law of plaintiff, defendant No. 3 is the niece of plaintiff and defendant No. 4 is the wife of defendant No. 3. That the suit-property was originally owned and in the name of the predecessor deceased Khandu Tukaram. On 1/3/1980 partition took place between deceased Khandu and his sons. The property at mauje Govindpur was given in share of deceased Khandu and the property at mauje Krushnapur property bearing land survey No. 71/2 admeasuring 3 acre 31 gunthe was jointly given to Maroti and Yadav. Since then their

families are separated. Accordingly, by putting the dhura East- West the land towards the North side was given in possession of the plaintiff temporary and the land towards the South side was given to defendant No. 1. Thereafter, the mark of the common dhura was destroyed by the defendant.

04. That the defendant No. 1 in collusion with the Talathi on the basis of alleged partition dated 02/02/2009 executed pherphar. That no such partition has been made. That the defendants are disturbing the peaceful possession of the plaintiff over the suit-property. Hence, through the application plaintiff has prayed to restrain the defendants.

05. To the contrary, the defendants have filed their say at Exh. 14 and counter T.I. application at Exh. 17. The defendant has denied the claim of the plaintiffs. As per the defendant, the suit-property land survey No. 171 admeasuring 01H. 54R out of which South side land admeasuring 0.77R having boundaries East- Hardada Krushnapur road, West- land of Arvind Babhle, North- land of defendant/original plaintiff and Kerba Jalke and South- land of Maroti Khandu Suryavanshi is the subject matter of the suit-property in their counter-claim.

06. That as per the partition dated 01/03/1980 shares were given to the plaintiff and defendants. That as per the partition, the plaintiffs and defendants are in possession of their share respectively as per the partition. That the defendant is in possession of the 0.77R and plaintiff is aware of the same. However, the original plaintiff is disturbing the possession of the defendants. Hence, this application Exh. 17 be allowed and application Exh. 05 of the original plaintiff be

rejected. The original plaintiffs have filed their say on Exh. 18 to counter T.I. Exh. 17 and have denied the contentions of the original defendants and prayed to reject the application Exh. 17 and to allow his application by restraining the defendants.

07. Heard the Ld. Advocates for both the plaintiffs and the defendant. On perusal of the rival pleadings of both the parties and document placed on records following points arose for my determination and I have recorded my findings along with reasons thereon as under:-

Str.No.	POINTS FOR DETERMINATION	FINDINGS
01.	Whether the plaintiff has made out <i>prima-facie</i> case in his favour ?	In the Negative.
02.	Whether balance of convenience lies in favour of plaintiff?	In the Negative.
03.	Whether plaintiff will suffer irreparable injury, if temporary injunction is not granted?	In the Negative.
04.	Whether the defendants have made out <i>prima-facie</i> case in his favour?	In the Negative.
05.	Whether balance of convenience lies in favour of defendants?	In the Negative.
06.	Whether defendants will suffer irreparable injury, if temporary injunction is not granted?	In the Negative.
07.	What order?	The application below Exh. Nos. 05 and Exh. 17 is rejected.

REASONS

AS TO POINT NOS. 01 TO 06 :-

08. As all points are interlinked with each other and to avoid the repetition of pleading and the facts, all these points are taken for

consideration in common.

09. While considering an application for the injunction, it is well settled, the Court would pass an order thereupon having regard to: (i) *Prima-facie*, (ii) Balance of Convenience and (iii) irreparable injury. Likewise, in *Colgate Palmolive (India) Ltd. Vs. Hindusthan Lever Ltd. AIR 1999 SC 3105*, the Hon'ble Supreme Court observed that the other considerations which ought to weigh with the Court hearing the application or petition for grant of injunctions are (i) Extent of damages being an adequate remedy; (ii) Protect the plaintiff's interest for violation of his rights though however having regard to injury that may be suffered by the defendants by reason therefor; (iii) the Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others; (iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case - the relief being kept flexible; (v) the issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case; (vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or *prima facie* case in support of the grant; (vii) whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.

10. The Ld. Advocate for the plaintiff has argued that, the suit property is in possession of the plaintiff. That the defendants do not have any right in the suit property. That the suit-property is in

possession of the plaintiff as per the partition. That the 7/12 extract reflect the name of the plaintiff in the document. *Prima facie* case and balance of convenience lies in the favour of the plaintiff and irreparable loss would be caused to the plaintiff if injunction is not granted in his favour. Hence, defendants be restrained. The Ld. Advocate for the defendants has argued that the plaintiff has not mentioned the exact area of the suit-property. That the defendants are in possession of the suit-property in counter-claim as per the partition taken place. That the plaintiff is aware of the same. However, he is disturbing the possession of the defendants. *Prima facie* case and balance of convenience lies in the favour of the original defendants and irreparable loss would be caused to the defendants if injunction is not granted in their favour Hence, prayed to reject the application of the plaintiff and to allow their application.

11. The relation between the plaintiff and defendants is not disputed. Moreover, that the partition was taken place on 01/03/1980 is also not disputed.

12. The main contention of the plaintiff and defendants that, they are in possession of the suit-property since partition. In support to the contentions, plaintiff has filed the 7/12 extract of suit-property. On perusal of the 7/12 extract documents of Gat No. 171, it appears that the names of the plaintiff and defendant No. 1 is recorded in the column of holder. It is not disputed that the plaintiff and defendant No. 1 have got collective shares in old survey No. 71/2 and present suit-property land survey No. 171. Further it appears that the area mentioned on 7/12 extract to the defendant No. 1 Madhav is 0.65R 0.09 pot kharab and the area of the plaintiff is 0.70R 0.10 potkharab.

13. The plaintiff has nowhere mentioned the exact area of the suit-property in the plaint and application Exh. 5. Hence, it appears that the plaintiff has not give the specific description and better particulars of the suit-property. Hence, it is difficult to identify the suit-property. In such circumstances, when the suit-property itself is not identifiable as the specific particulars are not given, it will not be just and proper to grant injunction to vague suit-property. Hence, plaintiff has prima facie failed to show the case in his favour.

14. To the contrary the defendants have contended that they are in possession of 0.77R in the suit-property. However, nothing is brought on record by the defendants to show that they are in possession of 0.77R as contended in the counter-claim. The area mentioned in the counter-claim and area shown in the name of defendant No. 1 in the 7/12 extract appears to the different and does not match. Hence, the defendants have prima facie failed to show case in their favour.

15. Further both the plaintiff and defendants have filed affidavits of villagers. It would not be just and proper to draw any inference from the said affidavits filed by both the parties before the Court. Moreover, the affidavits are not testified on the rule of cross-examination. Hence, on that basis of the affidavits, the Court cannot draw any conclusion as to who is in possession or who is not.

16. Hence, *prima facie* the plaintiff and defendants have failed to prove that they are in possession of the suit-property as per their contention. Hence, I answer Point No. 1 in negative and Point No. 4 in negative.

17. 'Balance of convenience' means comparative mischief or

inconvenience to the parties. As regards to balance of convenience and inconvenience as discussed above the plaintiff and defendants have failed to prove their possession over the suit-property as per their contentions. Hence, I answer Point No. 2 in negative and Point No. 5 in negative.

18. As to irreparable injury means such injury which cannot be adequately remedied by damages. It appears from the record and as discussed above plaintiff and defendants have *prima facie* failed to prove their case. Hence, I answer Point No. 3 in negative and Point No. 6 in negative.

19. Thus, considering the overall discussion and applying all principles for granting temporary injunction as per Order 39 Rule 1 of C.P.C. I hold that plaintiff and defendants failed to prove *prima facie* case in their favour. Hence, I proceed to pass the following order:-

ORDER

01. Application below Exh. 05 is hereby rejected.
02. Application below Exh. 17 is hereby rejected.
03. Both parties shall take note of the order.
04. Costs in Cause.

Sd/-

(P.S.Patil)

Date : 15/04/2024

Jt. Civil Judge (Jr. Dn.), Umarkhed