

CNR-MHYA110023722023



R.C.S. No. 124/2023
Anil Vs. Rekha+1

Order Below Exhs. 05 & 16

01. The suit is filed for injunction by the plaintiff against the defendants and the defendant No. 1 has filed counter-claim for injunction. The plaintiff at Exh. 05 and defendants at Exh. 16 have filed applications for interim relief under Order 39 Rule 1 & 2 of C.P.C. 1908, for granting injunction over the suit-property. The defendant No. 1 has filed his say to Exh. 05 below Exh. 14. The original plaintiff and defendant No. 2 to 4 in counter-claim have filed their say to Exh. 16 below Exh. 29.

02. Heard the Ld. Advocates for both the plaintiff and the defendants. 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:-

Sr.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 original defendant No. 1 has made out <i>prima-facie</i> case in her favour?	In the Negative.
05.	Whether balance of convenience lies in favour of defendant?	In the Negative.
06.	Whether defendant will suffer irreparable	In the Negative.

	injury, if temporary injunction is not granted?	
07.	What order?	The application below Exh. No. 05 and Exh. 16 is rejected.

REASONS

AS TO POINT NOS. 01 TO 06:-

03. 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.

04. The Ld. Advocate for the plaintiff has argued that, the suit-road is in existence through the land of the defendants. That the suit-road is the only road available to the plaintiff to go his property. That the defendants do not have any right to obstruct the suit-road of the plaintiff as the suit-road is the ancestral road in existence and used by the plaintiff. *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 by allowing their application and to reject the application of the original defendants. The Ld. Advocate for the defendants has argued that no cause of action has arose against the defendants. No such suit-road is in existence. No any document is brought on record to show the suit-road is in existence by the plaintiff. That the plaintiff has not come before the Court with clean hands. That the plaintiff has filed this suit to harass the defendants. That the suit-property in the counter-claim is in the possession of the defendants and the original plaintiff is causing obstruction to his possession. Hence, prayed to reject the application of the plaintiff and allow their application.

05. The main contention of the plaintiff is that, there is existence of suit-road (खुली डहाळण) to go to his property. The plaintiff has filed Pursis Exh. 34 that the malmatta No. 453 as per the new record is malmatta No. 86. In support to their contentions, the plaintiff has filed on record, the Assessment Extract of malmatta No.

453. On perusal of the document, it appears that the name of Sakharam Sambhaji Kanade appears in the column of owner. As per the contention of the plaintiff, he is the owner and in possession of the malmatta No. 453. Moreover, as per the revenue receipt of malmatta No. 86, it appears the name of Sakharam Sambhaji Kanade. No doubt the entries on the revenue record are merely for fiscal purpose. However, no any other document has been filed on record by the plaintiff to show that, he is the owner and in possession of malmatta No. 453/ new malmatta No. 86. Hence, on the documents filed on record, the name of plaintiff does not appear. Further it is the contention of the plaintiff that, through the suit road, the plaintiff has the way to go to his property. No document is brought on record to show the existence of the ancestral longlasting suit-road which is used by the plaintiff. Mere oral contention of existence of ancestral suit-road cannot be considered without any documentary proof on record. The plaintiff has *prima facie* failed to prove the existence of suit-road as per his contention.

06. To the contrary, the original defendant No. 1 has contended that, he is in possession of the suit-property as per the counter-claim. That malmatta Nos. 87 and 88 are given to the original defendant No. 1 through gift deed No. 1022/2021 dated 23/04/2021. In support to the contentions, the defendant has filed on record registered gift deed No. 1022/2021 dated 23/04/2021. On perusal of the sale-deed, it appears that, the description of malmatta No. 88 is mentioned as:-

अ.क्र. ९१, वार्ड क्र. ३, झोन क्र. २, मालमत्ता क्र. ८८, मालमत्तेचे वर्णन प्रकार- निवासी २६ ची खुली जागा व घर यांची लांबी पुर्व पश्चिम ८.०८ मिटर व रुंदी

उत्तर दक्षिण ४.९० मिटर यांचे एकुण क्षेत्रफळ ३९.५९ चौ. मि. यामध्ये बांधकाम क्षेत्रफळ ग्राउंड फ्लोअर ३९.५९ चौ. मि. बांधकाम दगड विटा मातीचे वर टिनपत्रासह घर व जागा चार दिवालीसह विनामोबदला बक्षीस दिली. यांची चतुःसिमा पुढीलप्रमाणे-

पुर्वेस - सिताराम कानडे यांचे घर

पश्चिमेस - कानडे यांची सामाईक बोळ

उत्तरेस – प्रयागबाई खंदारे यांचे घर

दक्षिणेस – सरकारी रस्ता

07. As per the suit-property mentioned in counter-claim, the description is mentioned as

न.पा. उमरखेड अनु क्र. ९१ वॉर्ड क्र. ३ झोन क्र. २ मालमत्ता क्र. ८८ मालमत्तेचे वर्णन निवासी २६ ची खुली जागा व घर यातील लांबी उत्तर दक्षिण ५.०३ मिटर व रुंदी पुर्व पश्चिम १.९८ मिटर याची चतुःसिमा

पुर्वेस – वादीची मालमत्ता क्र. ८८ मधील घर

पश्चिमेस – रस्ता,

उत्तरेस – प्रयागबाई खंदारे (सखाराम कानडे) यांचे घर, आणि

दक्षिणेस – सरकारी रस्ता

08. Hence, it appears that, the description mentioned by the original defendant No. 1 in counter-claim and in the sale-deed filed on record in respect of suit-property in counter-claim i.e. malmatta No. 88 appears to be different. Hence, the suit property in the counter-claim cannot be specifically identified. Hence, the original defendant No. 1 has prima facie failed to show case in his favour.

09. Further both the plaintiff and original defendant No. 1 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.

10. Hence, *prima facie* the plaintiff and original defendant No. 1 have failed to prove their case as per their contention. Hence, I answer Point No. 1 in negative and Point No. 4 in negative.

11. '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 original defendant No. 1 have failed to prove their case as per their contentions. Hence, I answer Point No. 2 in negative and Point No. 5 in negative.

12. 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 original defendant No. 1 have *prima facie* failed to prove their case. Hence, I answer Point No. 3 in negative and Point No. 6 in negative.

13. 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 original defendant No. 1 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. 16 is hereby rejected.
03. Both parties shall take note of the order.
04. Costs in Cause.

Sd/-

(P.S.Patil)

Date : 13/08/2024

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