



Instituted on : 29.06.2018

Registered on : 29.06.2018

Decided on : 24.03.2021

Duration : 02Yrs. 08Ms. 23Ds.

**IN THE COURT OF JOINT CIVIL JUDGE (JUNIOR
DIVISION) AHMEDPUR,
TQ. AHMEDPUR, DIST. LATUR.**

(Presided over by Shyam S. Tondchire)

Reg. Civil Suit No. 298/2018**Exhibit. No.29.**

MHLA060009472018

Kalinda Ramkrushna Walsane,

Age -37 years, Occupation-Household,

R/o. Bhavaniwadi, Tal. Ahmedpur,

District- Latur.

..... **Plaintiff.****-:Versus :-****Sunanda Angad Barure,**

Age -42 years, Occupation-Household,

R/o. Bodka, Tal. Ahmedpur,

District-Latur.

..... **Defendant.****Claim:- Suit for Perpetual Injunction.**

Advocates:- Mr. G.G. Akkangire Advocate for the plaintiff.

Mr. J.N. Kamble Advocate for the defendant.

-: J U D G M E N T :-(Delivered on this 24th day of March 2021)

The plaintiff has sought the relief for Perpetual Injunction
vide Section 38 of The Specific Relief Act, 1963 (For Short 'The

S.R.A.) against the defendant.

Subject matter:-

02] Subject matter of the suit land bearing Gat **No. 170** total **Adm. 01 Hector 20 Are**, (more particularly described in Para No.01 of the plaint) which is bounded as follows;

East:- Land of Madhav Rama Barure,
West:- Land of Balaji Suryabhan Barure,
South:- Land of defendant,
North:- Land of Kavita Kanwate.

situated at village **Bodka**, Tq. Ahmedpur Dist. Latur.

Henceforth, the land bearing Survey **No.170** shall be referred to as, '**The suit land**' for the sake of convenience.

Plaintiff's version:-

03] Accordingly, the plaintiff has purchased suit property from Venkat S/o. Madhav Barure by way of registered sale-deed bearing D.B.No.1398/2018 dt.20-04-2018. Since then, plaintiff is the owner and possessor of suit land. The plaintiff is cultivating and yield the income of suit of land. On the strength of sale-deed the Revenue authority sanctioned mutation entry in the name of plaintiff. The name of plaintiff appeared in 7/12 extract. The suit land was allotted to the share of father of Venkat Madhav Barure vide registered partition deed bearing D.B.No. 4184/2001. As per his wish the Venkat has sale the suit land to plaintiff.

04] Plaintiff has pleaded that, the land of defendant

situated towards the Southern side of the suit land. But, he has no concern with suit land. The defendant is day to day disturbing the possession of the plaintiff on the strength of money and muscle power as she was intention be purchase the suit land and thereby obstructed the peaceful possession of plaintiff over the suit land.

05] Plaintiff has pleaded that, the defendant is destroying the Common Drainage (Nala) situated between the land of defendant and suit land. Thereon, plaintiff and her husband requested to defendant and her husband do not block and destroyed the Common Drainage (Nala). But, they have flatly denied the request of them.

06] Moreover, plaintiff alongwith her husband on 25-06-2018 visited to defendant's house and requested do not destroy the same. But, in vain. The defendant having men and muscle power, she is given threats to the plaintiff and her family. Thus, there is absolute apprehension in the mind of the plaintiff of danger to person and suit land. Hence, she has filed present suit for Perpetual Injunction.

07] The defendant appeared but he did not file his written statement, inspite of sufficient opportunity given to her. So, the suit proceeded without her written statement vide order passed below (Exh.01) dt. 30.10.2018.

08] In view of pleadings of plaintiff, following points arise for determination and I have mentioned my findings thereon for

reasons to follow :

No.	POINTS	FINDINGS.
1)	Whether the plaintiff proves that, she is in possession of the suit land (described in Para No.01 of the plaint) ?	...In the affirmative.
2)	Whether plaintiff proves that, the defendant invaded and threaten to invade her right to enjoyment over the suit property (described in Para No.01 of the plaint) ?	...In the affirmative.
3)	Whether the plaintiff is entitled for perpetual injunction as sought ?	...In the affirmative.
4)	To what relief, if any, are plaintiff entitled ?	...As per final order.

:- REASONS :-

09] In order to substantiate her claim, the plaintiff has examined herself as (P.W.01) *vide* (Exh.22), the evidence by affidavit of (P.W.02) namely Ramkrishna S/o. Nivrutti Walsane at (Exh.23) and evidence by affidavit of (P.W.03) namely Venkat S/o. Madhavrao Barure at (Exh.26). Thereafter, closed her evidence by filing pursis at (Exh.28). She has also filed ample documents on record in support of her claim which is mentioned in following discussion as per their reference.

10] Learned Advocate G.G. Akkangire of the plaintiff has argued that, the plaintiff has proved that, she is owner and possessor of suit land. The defendant has no concerned with the suit land. Further, submitted that, defendant was intended to purchase suit land. Defendant has obstructed the peaceful

possession of the plaintiff over the suit land. Hence, She is entitled for the relief claimed.

Point No. 01 :- (As to Possession):-

11] As mentioned earlier, the defendant has not contested the suit by filing written statement or by conducting cross-examination of the plaintiff and her wetnesses. The defendant has not bothered to adduce any documentary or oral evidence either. In the circumstances, the Ld. Advocate for plaintiff submitted that since the plaintiff has stated her entire case on oath *vide* affidavit of evidence(Exh.22), the suit deserves to be decreed.

12] Here, the observations of the Hon'ble Apex Court in **Rameshchand Ardhavakiya Vs. Anil Panchagani (2003(4) Mh.L.J. 579)** deserves to be referred-

“...Though the Court is not bound to frame issues under O.XIV and deliver the judgment on every issue as required by O.XX R.5, yet, the trial Court would scrutinize the available pleadings and documents and consider the evidence adduced, and would do well to frame the points for determination and proceed to construct the ex-parte judgment dealing with the points at issue one-by-one. Merely because the defendant is absent the Court shall not admit evidence the admissibility whereof is excluded by law not permit its decision being influenced by irrelevant and inadmissible evidence.”

The Hon'ble Apex Court further observed that-

“...Even in the suit proceed ex-parte and in the absence of written statement, unless the applicability of O.IX R. 10 of CPC is attracted, the Court acts thereunder. The necessity of

proof by the plaintiff of his case to the satisfaction of the Court can not be dispensed with. In the absence of denial of plaintiff averments, the burden of proof on the plaintiff is not very heavy. A prima-facie proof of the relevant facts constituting the cause of action would suffice and the Court should grant the plaintiff such relief as to which he may, in law, to be found entitled...”

13] From the above observations, of the Hon'ble Apex Court, it is clear that merely because defendant failed to contest the suit in any manner, it does not mean that the Court will have to pass a decree in favour of plaintiff. The burden on the plaintiff will not be reduced due to non-contest of suit on part of defendant. Plaintiff will have to prove her case by adducing sufficient evidence on record. In our case, the plaintiff has claimed herself to be the owner and possessor of the suit land and has further claimed defendant invade or threaten to invade her right to enjoyment over the suit land. Therefore, she must prove that, she is in possession of the suit land on the date of institution of suit.

14] Let us, consider to see that, above facts proved by plaintiff. To support her claim, she has filed evidence by affidavit of plaintiff as (P.W. 1) at Exh. 22. I have gone through the evidence by affidavit, it appears that, she has reproduced the content of her pleading. Therefore, it is not necessary to reproduce the contents of affidavit as it. Upon sufficient opportunities the defendant has failed to cross-examination (P.W.01). Hence, the sole testimony of (P.W.01) is remains unchallenged and unshattered.

15] To support her case she has examined (P.W.02) at Exh.23 and (P.W.03) at Exh.26. P.W.2 is the husband of plaintiff. In the evidence of P.W.2 has come that, the plaintiff has purchased suit land from P.W.3 by way of registered sale-deed. Since then she is in possession of the suit land. She is cultivating the suit land with the help of him. Further come in his evidence that, the defendant have no concerned with the suit land. However, defendant has made obstruction of the peaceful possession of plaintiff.

16] P.W.3 is deposed that, he was absolute owner of the suit land. Due to his need, he has sale the suit land to defendant for consideration of the amount of Rs.4,50,000/- vide registered sale-deed. Upon sufficient opportunities the defendant has failed to cross-examination both the witnesses. Hence, their testimony are also remains unchallenged and unshattered.

17] In addition to oral evidence the plaintiff has filed original copy of sale-deed bearing registration No.1398/2011 at (Exh.27) executed by (P.W.03) Venkati, on 20.04.2018. The recital of sale-deed clearly shows that, (P.W.03) had delivered possession of the suit land to the plaintiff on the same day. This document has been executed before the Sub Registrar at Ahmedpur, as per the provisions Indian Registration Act, 1908. It is a public document within the meaning of section 74(2) of the Indian Evidence Act, 1872 (For short The Evidence Act). Plaintiff has produced copy of 7/12 extract of suit land, therein name of plaintiff shown in title

clause.

18] Moreover, learned Advocate for plaintiff has submitted that, the mutation has effected in the name of plaintiff and filed the copy of 7/12 extract of suit land. Said entries in the revenue record carry presumptive value under section 157 of the Maharashtra Land Revenue Code, 1966 (For short the M.R.C.Code). Undoubtedly, section 157 of the M.L.R. Code lays down presumption about correctness of the revenue entries. However, such presumption is not conclusive, but rebuttable.

19] As to rebut the presumption arise in favour of plaintiff, defendant did not adduce single document in her name in respect of suit land. All the documents on record in the name of plaintiff in respect of suit land, support to the pleading of plaintiff. It is clear that, plaintiff is in possession of the suit land as on the date of institution of the suit. Hence, I have no hesitation to hold that, the plaintiff is in possession over the suit land. Therefore, **I record the finding of Issue No. 01 in the affirmative.**

Point No. 02 :-[As to Obstruction]

20] As regards question of obstruction, plaintiff has affirmed on oath the fact of obstruction to her peaceful possession on part of defendant. The same is not denied by the defendant. In view of my finding on issue No. 1, it is clear that the plaintiff is in the possession of the suit land. Hence, as the plaintiff is in possession of the suit land, and defendant did not deny the

averments in the plaint. I have no hesitation to hold that, the defendants causing obstruction over the suit land to the plaintiff. Therefore, I record the finding of **Issue No. 02 in the affirmative.**

Issue No.03:-[Perpetual injunction]:-

21] Plaintiff has sought relief of simplicity injunction vide Section 38 of S.R.A. against the defendant. The relief of perpetual injunction is dependent on basis of possession. That is to say, in such cases, relief of perpetual injunction can be granted only if the claimant has proved his possession over the suit lands and obstruction at the hand of defendant.

22] In present case, above discussion and my affirmative finding on issue Nos. 1 and 2, it is shows that the plaintiff has established that, the defendant invade and threatening to invade her peaceful possession of the suit land. Accordingly, plaintiff is entitled to the relief of perpetual injunction as sought. Hence, I have record my finding of **Issue No. 3 in the affirmative.**

Issue No. 04 :-[As to what order & decree]:-

23] In the backdrop of above discussions and in view of my findings on Issue Nos. 01 to 03, it is crystal clear that, defendant has causing obstruction over the suit land, as sought by plaintiff. In such circumstances, the suit of plaintiff is desired to be decreed. In the given facts and circumstances, the plaintiff is directed to bear her own costs. In the result and my finding to **Issue No. 04, I**

proceed to pass following order;

∴ ORDER ∴

1. Suit is decreed.
2. The defendant or any other person claiming through her are hereby permanently restrained from doing any act which has an effect of causing obstruction to the peaceful possession of plaintiff over the suit land bearing Gat No. 170 Adm. 01 H. 20 Are., situated at Bodka, Tq. Ahmedpur, more particularly described in prayer clause-1 of the plaint.
3. Decree be drawn accordingly.
(Dictated and pronounced in open Court.)

Place :- Ahmedpur,

Date :- 24.03.2021.

(Shyam S. Tondchire)

Joint Civil Judge (Jr.Dn.)

Ahmedpur.