

MHJN010024762022 	Received on	:	29	08	2022
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IN THE COURT OF ADHOC DISTRICT JUDGE-2, JALNA
(Presided over by Mrs. V.L. Bhosale)

Misc. Civil Appeal No.43/2022

Exh-56

1. Shamkorbai wd/o Supadsing Salok,
Age:85 years, Occ: Agriculture.
2. Sudam s/o Supadsing Salok,
Age:61 years, Occ: Agriculture,
3. Nitin s/o Sudam Salok,
Age:37 years, Occ: Agriculture,
4. Dnyaneshwar s/o Sudam Salok,
Age:34 years, Occ: Agriculture,
5. Pralhad s/o Supadsing Salok,
Age:57 years, Occ: Agriculture,
6. Pramod s/o Pralhad Salok,
Age:35 years, Occ: Agriculture,
All R/o. Mahora, Taluka Jafrabad,
District Jalna

**Appellant
(Original Defendants)**

VERSUS

1. Sumanbai wd/o Vitthal Dolas,
Age:68 years, Occ: Nil.
2. Sheshrao s/o Vitthal Dolas,
Age:47 years, Occ: Agriculture,

3. Balasaheb s/o Vitthal Dolas,
Age:45 years, Occ: Agriculture,
4. Laxman s/o Vitthal Dolas,
Age:40 years, Occ: Agriculture
All R/o. Mhasrul, Taluka Jafrabad
District Jalna

**Respondent
(Original Plaintiffs)**

Appearance:

Mr. P.K. Wagh, Advocate for the Appellants.

Mr. N.B. Dande, Advocate for the respondent.

:: JUDGMENT ::

(Delivered on 15th July 2023)

1. Appellants being aggrieved & dissatisfied by the order passed by the order passed by the learned Jt. Civil Judge (J.D.), Jafrabad in R.C.S. No.100/2022 below Exh-5, dated 12.08.2022 have preferred this appeal.

2. Appellants are the original Defendants & respondents are original plaintiff (henceforth, they are referred to as plaintiffs & defendants for the sake of convenience.)

The case of the plaintiff, in short, is as under:

3. The old Grampanchayat Property No.299/2 in

Gat No.322 having new Grampanchayat property No.433 Area ad-measuring 15 X 20 feet situated at village Mahora, Taluka Jafrabad, District Jalna belonging to the predecessors of the plaintiffs and acquired by late Vitthal from late Supadsing by way of oral agreement to sale. In the year 1994, suit filed by defendant for recovery of possession was decreed, appeal was preferred which was allowed and the second Appeal No.575/2012 preferred against it is pending in Hon'ble High Court are the admitted facts.

4. It is the contention of plaintiffs that since 1982, they came in possession of the property since then they are paying the Grampanchayat taxes and are in continuous possession. Only during the action under Section 145 of Cr.P.C., the possession was taken by Government from Vitthalrao and after the decision of said dispute possession was given to him and his name in Gav Namuna-8 was entered. During the pendency of suit for possession before Hon'ble High Court, on 02.09.2021, the

plaintiffs constructed tin shade on suit property. On complaint to Tahasildar, Jafrabad he had directed to remove the tin shade. But, the said order could not be executed till filing of the suit. Due to this act of the defendants they were threatened that in future the defendant may erect the permanent structure may sell the property giving possession to third person or create any illegal transaction. Hence, he has prayed in the lower court for mandatory injunction.

5. The defendant opposing contention of plaintiff has submitted that as per submission of the plaintiff no sale deed has been filed by them on record to show transaction between deceased Supadsing & deceased vitthalrao. He submitted that no tin shade is erected by him and no encroachment has been done by him.

6. In Gat No.322, there are different plots of defendant, some of them given on rent and on some land

defendant has erected house and residing there. Plaintiff is nowhere concerned with this Gat No. 322.

7. The defendants have forged the documents and prepared false Gav Namuna-8. Plaintiff do not have possession over suit property as shown by him. Hence, he has prayed for rejection.

8. The Ld. Lower court has allowed the application for Temporary injunction and has given the finding that if the prayer of the plaintiff in respect of interlocutory mandatory injunction is not granted, it will amount to recovery of possession of suit property without following any process of law and there is no other option other than to allow application of interlocutory mandatory injunction, as there is no other remedy open to them by which they protect themselves from the consequences of apprehended injury.

9. Heard learned advocate for Appellants and respondents.

10. Considering the rival pleadings and submission, the following points emerged for my determination and I have recorded my finding for the reasons to follow.

S.No.	Points	Findings
1.	Whether impugned order passed by the learned Civil Judge (J.D.) Jafrabad in R.C.S. No.100/2022 below Exh-5 dated 12.08.2022 is legal & proper ?	In the affirmative
2.	Whether the interference is required ?	In the Negative
3.	What order ?	The appeal is dismissed.

REASONS

As to point Nos.1 & 2:-

11. Present appeal has been filed by the defendants being aggrieved by the order of Learned Lower Court. The lower court has passed the order of interlocutory mandatory injunction of the property with description old Grampanchayat property No.299/2 in Gat No.322 having new Grampanchayat property No.433, Area ad-measuring 15 X 20 feet situated at Village

Mahora, Taluka Jafrabad & District Jalna.

12. The defendant is disputing the description of the said property. On perusal of the record, it is seen that everywhere the description of the property is similar even in the suit filed by the Supadsing, (now deceased) whose appellants/defendants are legal heirs in R.C.S. No.31/1994. The description of the property is similar. Hence, there is no point in disputing by the defendant regarding description of property.

13. It is defendants contention that Gat No.322 is very large and exactly where the suit property is situated can not be assigned. In this respect, he has not produced on record any documentary evidence that he is owner and holding title and possession of Gat No.322, which is large in number. Hence, there is no support for the contention raised by the defendants.

14. The different Civil Suit were filed between the parties. The Civil suit between the parties i.e. R.C.S.

No.31/1994, R.C.A. No.24/2000 is recently pending, Second Appeal No.575/2012, are matter of record. If the contentions of the defendants are seen, it is his submission that there is no tin shade on the suit property, then question arises if the learned lower court has passed the order of interlocutory mandatory injunction what is the reason for the defendant to be threatened when there is no tin shade. Then why he is afraid of its removal. At this point, it needs to be considered that when Supadsing, (now deceased), had filed R.C.S. No.31/1994, it was regarding open land and it is the case of the respondent/plaintiff that on 02.09.2021, one unauthorized tin shade was placed on the property regarding which complaint was made by him to Tahasildar and Tahasildar had ordered to remove the shade on 26.11.2021. The factual aspect on record shows that the shade was installed during the pendency of the second appeal at Hon'ble High Court.

15. Hence, from above discussion, it is crystal

clear that the description of the property is proper and the tin shade is erected during pendency of second appeal. Now, the question here is whether the tin shade is authorized or unauthorized. Definitely, when the plaintiff has not constructed the tin shade in the property in his possession there, it is installed by the defendant who is praying that it shall not be removed by way of mandatory injunction. As far as question of possession is concerned, the second appeal in Hon'ble High Court filed by the defendants for possession from the plaintiffs is pending which shows that possession is of the plaintiff. Hence, the defendants had filed the second appeal for possession. The other aspect on this ground is that the plaintiffs are submitting that they have possession of the suit property from 1982, which has been obtained by them from the deceased Supadsing, (now deceased) in the year 1982, by way of oral agreement to sell. This also shows that the plaintiffs are admitting the possession of the defendants prior to 1982 and recently possession of the respondents/plaintiff is seen.

16. The other contention raised by plaintiff is regarding property being immovable property as per Section 54 of the Transfer of Properties Act, it was required to be registered sale deed and no suit for specific performance is filed by the plaintiffs is concerned, it needs to be noted that the present suit is not filed for declaration, it is the suit for mandatory injunction and as discussed above, plaintiffs are in possession of the suit property on which the defendants have installed or constructed the tin shade. For this aspect, it is not necessary to prove the ownership and title. As per contention of the defendants, plaintiff is trespasser, in that event even the trespasser has the right to protect his interest and possession.

17. The Judgment relevant in other suits are for perpetual injunction and on different factual aspect. As per the defendant, no sale deed has been produced by the plaintiffs. But, it is the case of the plaintiff that there was oral agreement between their deceased father Vitthal and

deceased Supadsing and even the defendants have not produced any document to show their title and ownership. Hence, this argument conspired by the defendants has no substance.

18. As far as calling of the report of the Court Commissioner to identify the suit plot is concerned, it was for the parties alleging to file the application in the learned lower court to call the report of Court Commissioner by appointing him to inspect the property.

19. Section 39 of the Specific Relief Act deals with the relief of mandatory injunction, it states that:

“When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.”

Mandatory injunction are contemplated under Section 39 of the Specific Relief Act, and is granted

whether it is necessary to prevent breach of obligation of the act erring the parties, and the parties may be compelled to performs certain act. Such injunction can be granted under following circumstances.

- I) There must be an obligation on part of the defendant to perform certain acts the breach of which, must be alleged by the plaintiff.
- ii) Such relief must be enforceable by the court.

In the case of *Dorab Cawasji Warden vs Coomi Sorab Warden & Ors*, The Hon'ble Apex Court laid down that:

“The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to

the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guide lines:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief.”

20. In the case of Deoraj vs. State of Maharashtra & ors., whereby the Court held that Court would grant such an interim relief only if it is satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice.

21. In the light of above legal position and factual aspect, it appears that the plaintiff has erected the tin

shade during pendency of the second appeal when the matter is subjudice, it is for the parties not to change the nature of the property when the matter is subjudice. This lawful aspect needs to be considered by the defendants as ignorance of law is no excuse. Also, when he himself is admitting the possession of the plaintiff filing the second appeal for possession and then denying his possession erecting the tin shade. These aspects are establishing the prima-facie case more than required. If the tin shade is removed, no loss will be caused to the defendants as he has nowhere stated in his grounds that any loss will be caused to him due to removal of the tin shade. On the contrary denies its erection itself. Hence, balance of convenience also in the favour of plaintiffs and on above discussion, I do not find any ground to interfere with the order passed by the lower Court. Hence, the appeal filed by the defendants is hereby rejected.

22. In view of the above discussion, I conclude that the finding of learned trial court regarding

interlocutory mandatory injunction is proper. The learned trial court has rightly allowed the prayer of interlocutory mandatory injunction.

23. Hence, I answer point No.1 in the affirmative and point No.2 in the negative.

24. In view of above findings, the appeal is liable to be dismissed. In the result, I pass following order:

ORDER

1.	The appeal is dismissed.
2.	The order dated 12.08.2022 passed by the learned lower court is confirmed.
3.	Parties to bear the cost.
4.	Inform to learned Civil Court accordingly.

Date : 15/07/2023.

(Mrs. V.L. Bhosale)
Adhoc District Judge-2,
Jalna.

C E R T I F I C A T E

I affirm that, this PDF file is word to word as per original Order/Judgment.

Order Dictated On : 15.07.2023

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(S.M.Sapkal)
Stenographer (Grade-3)