



Presented on : 03/10/2022
Registered on: 14/10/2022
Decided on : 17/02/2023
Duration : 0Y.4M 14D.

IN THE COURT OF DISTRICT JUDGE-4, BARAMATI, DIST. PUNE.

(Presided over by : R.K. Deshpande, B.Sc. LL.M.)

MIS. CIVIL APPEAL NO.78/2022

Exh.18

- 1) **Vasant Pandharinath Narute**
Age : 42 years, Occ. : Agriculturist
- 2) **Vilas Pandharinath Narute**
Age : 50 years, Occ. : Agriculturist
- 3) **Dattatraya Eknath Narute**
Age : 50 years, Occ. : Agriculturist
- 4) **Gajanan Eknath Narute**
Age 40 years, Occ. : Agriculturist
All above residing at Kazad (Shindewadi)
Tal. Indapur, Dist. Pune

**..... Appellants
(Plaintiffs)**

Versus

- 1) **Nitin Dattu Patil**
Age : 43 years, Occ. : Agriculturist
- 2) **Subhash Nana Patil**
Age : 45 years, Occ. : Agriculturist
- 3) **Raghunath Malhari Patil**
Age 65 years, Occ. : Agriculturist
- 4) **Babasaheb Popat Patil**
Age 40 years, Occ. : Agriculturist
- 5) **Natha Nanasaheb Patil**
Age 36 years, Occ. : Agriculturist
All above residing at Kazad (Shindewadi)
Tal. Indapur Dist. Pune

**.....Respondents
(Defendants)**

APPEAL UNDER ORDER 43 OF THE CODE OF CIVIL PROCEDURE

Adv. N.G. Shah for the Appellants/Plaintiffs

Adv. P.G. Jagtap for the Respondents/Defendants

JUDGMENT

(Delivered on this 17th day of February, 2023)

Being aggrieved and dissatisfied by the order passed by learned Joint Civil Judge Junior Division, Indapur, in RCS No.376/2012 below Exh.40 whereby learned trial court by way of its order dated 17/09/2022 rejected the application for granting status-quo filed by appellants/ plaintiffs. (Here-in-after parties are referred as to plaintiffs and defendants as per the status as specifically mentioned in plaint of the suit)

2. According to the appellants/plaintiffs the order passed by learned Joint Civil Judge Junior Division, Indapur below Exh.40 is bad-in-law and not maintainable under Order 39, Rule (1) and (2) of Code of Civil Procedure. On the face of record it is the dispute of location and boundary-mark of suit property and property mentioned in the counter claim filed by defendants/respondents. The order passed by learned trial court below Exh.40 is without applying judicial mind. Actual measurement of suit land of Gat No.210 is necessary. Moreover, the respondents/defendants are also claiming injunction of suit land Gat No.210 of village Shindewadi, (Kazad) in his counter claim. In this situation unless the boundaries of both the parties are fixed by cadasteral surveyor, the order of status quo is required to be passed. However, inspite of the above facts the learned trial court has rejected the application filed by appellants/plaintiffs below Exh.40 and hence by way of this present appeal appellants have approached this court for

setting aside the order passed by learned lower court below Exh.40 and also claiming further necessary relief and order.

3. It is necessary to make it clear that when this miscellaneous appeal came before this court for the first time, on that day i.e. on 19/10/2022 after hearing advocate for appellants/plaintiffs only, this court has directed both the parties to maintain 'status-quo' of today's position in respect of suit property as specifically mentioned in the plaint and ordered to issue notice to the respondents/defendants and in response to the notice issued by this court respondents/defendants appeared before this court and they filed their reply on record below Exh.12.

4. While denying the contentions made by appellants/plaintiffs by way of their present miscellaneous appeal, respondents/defendants have raised question mark about the maintainability of present appeal before this court. According to respondents/defendants, appellants/plaintiffs have no prima-facie case in their favour and they have also filed their counter-claim in the suit filed by appellants/plaintiffs claiming temporary injunction against appellants/plaintiffs in respect of suit property. However, by filing various applications, appellants/ plaintiffs tried to prolong the hearing in the suit which is pending before trial court. According to respondents/defendants, appellants/plaintiffs have no any concern with the suit property of suit as well as counter claim and just to harass the respondents/defendants, the appellants/plaintiffs have filed their application for measurement of suit property before learned lower court. Respondents/defendants submits that the order passed by learned trial court is just, proper one and there is no need to make any interference in it. Looking the above facts respondents/ defendants prayed for rejection of this miscellaneous appeal.

5. I have heard **Adv. N.G. Shah** for the appellants/plaintiffs and **Adv. P.G.Jagtap** for the respondents/defendants.
6. Following points are arise for my determination. The points and my finding thereon with reasons are as given below :

SR NO	POINTS	FINDINGS
1]	Whether the impugned order passed by the learned Joint Civil Judge Junior Division, Indapur is erroneous, frivolous and therefore needs interference at the hands of this court?	In the affirmative.
2]	What Order ?	As per final Order.

REASONS

AS TO POINT NO.1 :

7. Before going into the merits of the order passed by learned trial court Indapur, it is necessary to mention here that while passing order below Exh.1 on 19/10/2022, this court (without hearing respondents /defendants) in its order, has specifically mentioned that prima-facie it reveals from the record that in the case in hand there is a dispute in respect of boundaries of suit property and further observed that while passing order below Exh.40, learned trial court prima-facie has not appeared to have consider the necessary ingredients which are necessary in order to consider while deciding the application for temporary injunction and allowed the 'status-quo' application filed by appellants/plaintiffs and same is extended till date.

8. The record further shows that the order on application filed by appellants/plaintiffs for appointing cadasteral surveyor as a court commissioner is yet to be passed by learned trial court. Moreover, both the parties i.e. appellants/plaintiffs and respondents/defendants before

trial court also filed their respective applications for claiming temporary injunction in the suit filed by the appellant/plaintiff as well as in the counter claim filed by respondents/defendants. In such situation at this early stage this court is of the opinion that without scanning the prima-facie documents available on record, and before making any observation in respect of the facts available on record, it is necessary to direct learned lower court to decide the application filed by the plaintiffs for appointment of cadasteral surveyor as a court commissioner at the earliest and after receiving the report from cadasteral surveyor, decide the applications filed by appellants/plaintiffs and respondents /defendants for seeking temporary injunction under Order 39 Rule (1) and (2) of Code of Civil Procedure within the period of four weeks. Accordingly, I answer point No.1 in affirmative and proceed to pass following order :

ORDER

1. The present MCA No.78/2022 is allowed.
2. Both the parties to maintain status quo of today's position in respect of suit property as specifically mentioned in the plaint till passing order on the application filed by appellants / plaintiffs and respondents/defendants for seeking temporary injunction under Order 39 (1) and (2) of Code of Civil Procedure.
3. The learned lower court is directed to decide the application filed by the appellants/plaintiffs for appointment of Cadasteral surveyor as a court commissioner at the earliest.
4. After receiving the report from Cadasteral surveyor, the learned trial court is directed decide the application filed by appellants /plaintiffs and respondents/defendants for seeking temporary injunction under Order 39 Rule (1) and (2) of Code of Civil

Procedure within the period of four weeks from the date of receipt report of Cadasteral surveyor i.e. court commissioner.

5. Advocate for both the parties to cooperate the learned trial court in order to dispose of the applications filed on their behalf for claiming temporary injunction in RCS No.376/2022.
6. Accordingly MCA No.78/2022 is disposed of.

(Dictated and pronounced in open court)

Baramati.
Date : 17/02/2023

(R.K. Deshpande),
District Judge -4 and
Additional Sessions Judge,
Baramati, Dist. Pune.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same word for word as per original Order.

Name of Stenographer	:	Mrs. B.J. Khandre(Steno G-1)
Court Name	:	R.K. Deshpande, District Judge-4 and Additional Session Judge, Baramati, Dist. Pune.
Date of Order	:	17/02/2023
Order signed by Presiding Officer	:	17/02/2023
Order PDF/ uploaded on	:	17/02/2023