

MHAU010067022022



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Decided on : 11.06.2024

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**IN THE COURT OF DISTRICT JUDGE, CHHATRAPATI**  
**SAMBHAJINAGAR,**  
**(Presided over by Smt. Richa. D. Khedekar,**  
**District Judge-12, Chhatrapati Sambhajinagar)**

**Miscellaneous Civil Appeal No. 164/2022**  
**Exh.No.19**

1. Shri. Dwarkadas Raosaheb Kakde  
Age : 45 years, Occupation: Agriculture,  
R/o : Nipani  
Tal. and Dist.Chhatrapati Sambhajinagar.
2. Shri. Gorakhnath Raosaheb Kakde  
Age : 40 years, Occupation: Agriculture,  
R/o : Nipani  
Tal. and Dist.Chhatrapati Sambhajinagar. ....**Appellants**  
(Original Plaintiffs)

**- Versus -**

1. Shri. Anna Govind Kakde  
Age : 62 years, Occupation: Agriculture,  
R/o : Nipani  
Tal. and Dist.Chhatrapati Sambhajinagar.
2. Shri. Shriram Govind Kakde  
Age : 25 years, Occupation: Agriculture,  
R/o : Nipani  
Tal. and Dist.Chhatrapati Sambhajinagar. ... **Respondents**  
(Original defendants)

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Learned advocate for the appellants : Shri. D.G. Gorme  
Learned advocate for the respondents : Shri. S.P.Darandale  
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**JUDGMENT**

(Delivered on 11<sup>th</sup> June 2024)

1. Being aggrieved and dissatisfied by the order passed by learned 7<sup>th</sup> Joint Civil Judge Junior Division, Chhatrapati Sambhajinagar, in Regular Civil Suit No. 467/2022 below Exh. 5 on 17/08/2022, the appellant/original plaintiffs preferred this appeal under Order 43, Rule 1(r) of Civil Procedure Code. (Hereinafter the parties are referred as per their original nomenclature in the suit.)

2. The appellants/original plaintiffs filed Regular Civil Suit No. 467/2022 for claiming perpetual injunction against the defendants for restraining them to make any construction in open space of 3 x 25 feet out of House No.249 on northern side of house of the plaintiffs situated at village Nipani, Tal. And Dist. Chhatrapati Sambhajinagar and possession in the land admeasuring 9x25 feet situated on northern side of house of the plaintiffs situated at village Nipani, Tal. And Dist. Chhatrapati Sambhajinagar.

3. It is averred that, the property i.e. open space of 12x25 feet belonging to the plaintiffs and situated between the house of the plaintiffs and the defendants which is more particularly described by boundries in plaint paragraph no.1. The plaintiff no.1 and 2 are real brothers of House No.249 situated at

Nipani, Tal and Dist. Chhatrapati Sambhajinagar. They are residing there since their forefathers. It's area is 40x40 feet. The plaintiffs have possessory title over the said house. Their names are also entered in Gram Panchayat Record. Previously it was constructed in mud and stones, bricks but it was in dilapidated condition. So, in the year 2012, the plaintiffs constructed house by demolishing old house in the plot in east-west direction of 30x28 feet. They kept 10 feet land open on western side for platform purpose and kept 12 feet land i.e. 12x25 feet land towards northern side.

4. It is further averred that, the defendant no.1 is father of the defendant no.2. They are residing towards northern side of open land of the plaintiffs. They are hooliganism in nature and therefore, not only the plaintiffs but also villagers scared to them. In the year 2014, they constructed house towards northern side of the plaintiffs. They made encroachment in 9x25 feet. The plaintiffs tried to convince them that the said land is kept for children as ground. But, the defendants did not listen and threatened them to cause their death. So, the plaintiffs did not take any action against them. The plaintiffs are peace loving citizens and the defendants made encroachment in open land of 9x25 feet. Their names are not recorded to Gram Panchyat Record.

5. It is further averred that, the plaintiffs are paying regular taxes of the property. After 2 or 3 years the defendants again constructed staircase towards northern side of open space

belonged to the plaintiffs. So, the plaintiffs again gave understanding to the defendants but they did not listen. On 14/10/2022 the defendants started construction by bringing material over remaining plot of 3x25 feet. The plaintiffs took objection for the same. But they did not listen. So, on 15/03/2022 the plaintiff no.1 went to police station and gave written complaint. However the police have not taken any action. So, the plaintiffs filed complaint to Gram Panchayat and Gramsevak. Therefore, if the injunction as prayed is not granted the plaintiffs will suffer irreparable loss. Hence, they filed suit for permanent injunction and prayed temporary injunction to that effect by filing application at Ex.5.

6. The defendant no.1 and 2 filed say at Ex.11 contending that, the plaintiffs and their forefathers were in possession of land admeasuring 28x30 feet. They were not in possession of 40x40 land at any point of time. Hence, they prayed to reject the application.

7. It is submitted by the appellants that, learned Trial Court without applying its mind partly allowed the application at Exh. 5 by order dated 17/08/2022. It was passed without considering facts of the case which is totally wrong, illegal and improper. It is further submitted that, learned Trial Court has not considered that, the defendants have not filed any evidence to show that they are using the said land since 35 years. Their names have not recorded to Gram Panchayat record. Learned Trial Court has decided the application without considering legal provisions.

The plaintiffs will suffer irreparable loss by partly allowing temporary injunction. It is further submitted that, learned Trial Court wrongly considered that, only 12x10 feet land is open and the ownership in the said land is proved by the plaintiffs. Therefore, the appellants prayed to set aside order passed below Exh. 5 by learned Trial Court.

8. Learned advocate Shri. D.G. Gorme for the appellants filed written arguments at Ex.17 and learned advocate Shri. S.P. Darandale for the respondents filed written arguments at Ex.18. Following points arise for determination and they are given together with findings thereon for the reasons stated below:-

| <u>Points</u>                                                                                                               | <u>Findings</u>                 |
|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| 1. Whether the order passed by ... learned Trial Court below Exh. 5 in Regular Civil Suit No.467/2022 is legal and proper ? | <b>In the affirmative.</b>      |
| 2. What order?                                                                                                              | <b>... Appeal is dismissed.</b> |

### REASONS

#### 9. Point No. 1 :-

It is settled law that, for grant of temporary injunction under order 39 Rule 1 of Civil Procedure Code, three basic principles are prima-facie case, irreparable loss and balance of convenience. If these three ingredients are in favour of plaintiff then he is entitled for temporary injunction. Considering these principles it is to be seen

whether the plaintiff is entitled for temporary injunction in the present case.

10. Learned advocate for the appellants submitted that, learned Trial court has not considered that, the names of the defendants were not recorded to Gram Panchyat record. Due to obstruction by the defendants, the suit for permanent injunction is filed. Learned Trial court has not considered that, the plaintiffs were firstly in possession of open space and the defendants are making illegal construction in it.

11. Learned Trial Court held that, the plaintiffs are entitled for possession of 12x10 feets land. It relied on priciples for grant of temporary injunction and held that, prima facie the defendants have not filed any documents to show that, they have right to enjoyment of said open land. If the construction is completed, it will cause irreparable loss. The plaintiffs showed their right to suit property. The defendant is making illegal construction. Therefore it is prima facie proved that, the defendant is illegally making construction in open land.

12. Considering all these circumstances, it is held that, the order passed by learned Trial Court below Exh. 5 for partly allowing the application after hearing on merit is legal and proper. It is settled law that, the relief of injunction is an equitable relief. He who seeks equity must do equity. The plaintiffs averred in paragraph no.7 of the application that, the defendants started making construction in remaining land of 3x25 feets on 14/3/2022. They averred in paragraph no.3 of the application that, they kept 10 feets land open towards western side for platform. But it is not explained as to how it is mentioned that 12x25 feets total land towards northern side as ground

for children. Therefore, it is held that, on that pleading and legal grounds the order passed by learned Trial Court regarding area of 3x10 feet is maintainable in the eyes of law. There is no authorized map on record to prove any measurements of the property to show how much area is open and how much is constructed.

13. Learned Trial Court has rightly held that, as per documents filed on record the plaintiffs prima facie shown his possessory right to property. The legality of construction by the defendants cannot be decided at this stage. The plaintiffs filed documents i.e. 7x12 extract and Form No.8 of Gram Panchayat to show that, the defendants are making unauthorized construction in 3x25 feet open land.

14. Hence, it is held that, the order passed by learned Trial Court below Exh. 5 in Regular Civil Suit No. 467/2022 is legal, proper and correct. Therefore, point No. 1 is answered 'in the affirmative'.

15. **Point No. 2 :-**

The sum and substance of above discussion is that, the appeal is liable to be dismissed. Hence, I pass following order: -

### **ORDER**

1. The appeal is dismissed.
2. The order passed by learned 7<sup>th</sup> Civil Judge Junior Division, Chhatrapati Sambhajinagar below Exh. 5 in Regular Civil Suit No. 467/2022 dated 17/08/2022 is confirmed.

3. Inform learned Trial Court accordingly.

(Judgment pronounced in the open Court.)

(Smt. Richa D. Khedekar)  
District Judge-12,  
Chhatrapati Sambhajnagar.

Date: - 11.6.2024



CERTIFICATE

I affirm that the contents of this P D. F file Order/Judgment are same, word to word, as per the original Order.

Name of the Stenographer : V.B. Sadashive

Court : ( R.D. Khedekar)

District Judge-12 &

Additional Sessions Judge,  
Chhatrapati Sambhajanagar

Date : 10/06/2024.

Judgment signed by the

presiding officer on : 11/06/2024.

Judgment uploaded on : 11/06/2024.