

ORDER BELOW EXH. 05 IN RC.S.NO. 417/2024**(Sk. Naseem Vs. Syed Nazeer)**

This is an application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 for grant of temporary injunction.

The brief facts of the plaintiff's case are as under :-

2. The plaintiffs have filed suit for perpetual injunction against defendants, wherein plaintiffs have filled application under order 39 Rule 2 of C.P.C. for temporary injunction for restraining the defendants from causing obstruction and interference in the peaceful possession and enjoyment of the suit property Gut no 65 at village Sahjapur, Tq. and dist. Aurangabad admeasuring 1 hector 84 R collectively of both the plaintiffs i.e. 90 R of plaintiff no 1 and 94 R of plaintiff no 2. (Hereinafter called as "suit property" for the sake of brevity).

3. The plaintiffs contended that plaintiffs No.1 is a wife and plaintiff No. 2 is a son of Shaikh Hussain s/o Shaikh Raheem i.e. the original owner of the suit property. The Shaikh Hussain Shaikh Raheem has executed Hibanama in respect of 90 R land on 22.9.2020 in favour of plaintiff no 1 and on 24.3.2023 he has executed a deed in respect of 94 R. land in favour of plaintiff no.2.

4. The defendant has no concern with the suit property. The defendant claim to be concerned with gat no 64 south side of the suit

property. The defendant is causing obstruction and interference in the peaceful possession of the plaintiffs wherein the plaintiffs are having the bricking business and are having a school being run with a wire fencing to the suit property, on east and south of iron poles. On the north side there is a compound wall of the other neighbor and also on west. There is no passage from the property and even the village Map doesn't show the passage in gut no 65.

5. The obstruction became more severe and attempts for the removal of wire fencing on the south and east became more severe in collusion with the builder Salampure and company. The plaintiff no 2 has filled complaint to the police station but no action has been taken. The defendant may any time remove the wire fencing and start the illegal acts of trespass in the suit property. The plaintiffs have made out strong prima facie case, balance of convenience lies in his favour, therefore prayed to allow the application.

6. The defendants appeared and filed their say to the application and opposed the application. It is submitted that both the plaintiffs are claiming their separate right in respect of their separate separate self acquired portion which as per their own contention is governed by Muslim law. The suit is not tenable as the prior permission of this court is not taken for filing the suit in representative nature. Both the plaintiffs are independent and the description of their each portion is different. The defendant is the lawful owner and in possession of the portion of the land gut no 64

to the extent of 67 R. in fact there is approximately 20 feet wide road to the land of the present defendant from his eastern side which is passing from the southern side of the land gut no 65. The said road is in existence since long and it is the only way to reach to the land gut no 64. The photographs showing the road is filed on record. The relevant sale deed showing the existence of the road towards the south side of the land gut no 65.

7. It is further denied that defendant is obstructing into the suit property of the plaintiffs. It is denied that there is wire fencing to the east and south side of the suit property. Village map is not filed with further clarification that the existing road is provided by the original owner since long for the passage to the possessors of the land Gut no. 64 and 65 who have no any alternate way to enter their land except the present one which is falsely and showed as part of the suit property. It is further submitted that owner of gut no. 66 has not filed any complaint or suit as against the defendant when particularly the wire fencing is said to be raised by plaintiff no 2 alongwith him i.e Shhabir Budhan, claimed to be the owner of gut no. 66. If the injunction is granted then defendant will suffer great irreparable loss which cannot be compensated in terms of money. Defendant will have no way to reach his land which equity law does not permits. The plaintiff is trying to close the existing 20 feet road and to grab it getting clubbed with the rest of the land. The plaintiffs can get their land measure and get it located with existing 20 feet road and so also the Court Commissioner can be appointed to visit

the suit property and road to show the real situation before the court. Hence, prayed to reject the application.

8. Considering the contention of plaintiffs and defendant, following points arise for my determination. I have recorded my findings thereon with reasons as under :-

Sr. No	Points	Findings
1.	Whether plaintiffs have prima-facie case against defendants ?	No.
2.	Whether balance of convenience lies in favour of plaintiffs?	No.
3	Whether plaintiffs would put to suffer irreparable loss, if injunction as sought by her is not granted ?	No.
4	What order ?	Application is rejected.

9. Plaintiffs in support of their contention have filed documents below Exh. 4 i.e. copy of registered sale deed dated 17.11.1995, copy of registered sale deed dated 12.04.2012, copy of registered gift deed dated 22.09.2020, copy of notarized memorandum of Hibanama dated 24.03.2024, copy of 7/12 extract of gut No.65, copy of 7/12 extract of gut No.64, copy of police complaint dated 29.03.2024, copy of map and copy of four photos. On the contrary defendant has filed 7/12 extract of gut No.64, 65

and 66, affidavit of 7 persons, copy of photo and 7/12 extract of gut No.1.

REASONS

AS TO POINT NO. 1 :-

10. Considering the relief sought by the plaintiffs, it is an appropriate to refer Order-XXXIX, Rule-1 of Civil Procedure Code 1908.

11. Order-XXXIX, Rule 1 of C.P.C. in which cases temporary injunction may be granted- where in any suit it is proved by affidavit or otherwise -

- a) That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- b) That the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,
- c) That the defendant threatens to dispossess the plaintiffs or otherwise cause injury to the plaintiffs in relation to any property in dispute in the suit.

12. The Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying

and preventing the wasting, damaging, alienation, sale removal or disposition of the property [or dispossession of the plaintiffs, or otherwise causing injury to the plaintiffs in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

13. After going through the aforesaid provision, in the light of facts and circumstances involved in the case at hand, it is pertinent to mention that Order-XXXIX, Rule-1 (c) of C.P.C. is applicable, wherein, plaintiffs is supposed to prove or bring prima facie material on record in accordance with Order-XXXIX, Rule-1(c) of C.P.C, in order to show his possession. Thus, considering the provision of Order-XXXIX, Rule-1 (c) of C.P.C. it is binding on the plaintiffs to prove that, she has prima facie case.

14. Perused the application, say and record of the case. Heard respective parties. The plaintiff to prove his prima facie case submitted that, plaintiffs is the owner of gut No.64. The plaintiffs have erected wall and wire fencing to their land. Defendant is claimed to be the owner of gut No.65. The plaintiff is having apprehension that defendant is trying to obstruct the possession and damage the wire fencing of the plaintiffs land. The plaintiffs have filed village map and sale deed of gut No.64, wherein there is no road shows in the village map and sale deed. On the contrary defendant submitted that there is no alternate road to approach gut No.65. He further submitted that there is no wire fencing to suit

property and defendant has not obstructing to the possession of plaintiffs over gut No.64. The defendant filed photograph on record which shows that road is there over gut No.64. Further the defendant has filed affidavit of 7 person which are adjacent to the owner of gut No.64 stating that in gut No.64 there is a road and no alternate road is available to approach their respective land.

15. The plaintiffs have filed copy of Registered Sale deed bearing No. 2236/1995 dated 17.11.1995, copy of Registered sale deed bearing No. 2667/2012 dated 12.04.2012, copy of Registered Gift Deed bearing No. 3692/2020 dated 22.09.2020 and copy of notarized memorandum of Hibanama dated 14.03.2023. Perusal of these documents, it appears that plaintiffs is the owner of Gut No. 64. The plaintiffs have filed village map on record. Ld. Advocate of the plaintiffs argued that there is no road either appears in the sale deed nor in village map filed on record. Therefore, there is no road exist over Gut No. 64. On the contrary, Ld. Advocate of the defendant argued that the satellite map and photoes filed on record shows the road over Gut No. 64, further to support the contention has filed affidavit of 7 persons adjacent to the land of suit property, therefore he argued that there is a road over the suit property.

16. Perusal of village map, wherein, the road does not appears. The plaintiffs have filed photos on record, wherein the wire fencing are appears. On the contrary, photos filed by the defendant shows the road. The plaintiffs denied that there is a road over the

suit property. The plaintiffs claimed that the defendant is causing obstruction and interference in the peaceful possession of the plaintiffs over the suit property. The defendant denied that there is wire fencing to the east and south side of the suit property. The defendant has filed affidavit of 7 persons. Perusal of affidavit, it shows that all 7 persons have claimed that there is a road over Gut No.64. The plaintiffs straight-way denied that there is road over the suit property. On the contrary, defendant alongwith persons who have filed affidavit are claimed that there is a road over the suit property. The 7 persons on oath by affidavit stating that there is road over the suit property and defendant submitted that there is no alternate road to approach his land. The defendant claimed that Court Commissioner be appointed to visit the suit property and to show the real situation before the Court. The plaintiffs though filed village map on record, but defendant has filed photograph as well as affidavit of 7 persons, showing the road over the suit property. In the situation, if the road is not existed as per the plaintiffs, then the question of obstruction to the suit property does not arise. On the contrary, if the road is existed then the right of the defendant will affect. In such situation, the injunction cannot be granted without further clarification and adjudication. Hence, considering the situation, facts and circumstances of the case, plaintiffs failed to prove prima facie case in his favour. Hence, I answer to point No.1 in the negative.

As to point Nos. 2 and 3:

17. Both the points are interlinked with each other, therefore they are discussed jointly. It is necessary to discuss that whether balance of convenience lies in favour of plaintiffs and irreparable loss would cause to plaintiffs. The plaintiffs have failed to prove his prima facie case against defendant. The plaintiffs claimed that defendant obstructing to the peaceful possession of the suit property. On the contrary, defendant submitted that he has no alternative way to approach his land. In this situation, if the injunction is granted then irreparable loss will be caused to defendant instead of plaintiffs. It appears that in compare to defendant plaintiffs could not have cause irreparable loss, hence I answer to points no. 2 and 3 in the negative and in answer to Point No.4 - I pass following order :

ORDER

1. Application (Exh. 05) is rejected.
2. Cost will follow in main cause.

Aurangabad.
Date - 14/06/2024

(G. D. Gurnule)
20th Civil Judge Jr. Division
Aurangabad.

CERTIFICATE

I affirm that the contents of this [P.D.F.](#) file order are same, word to word, as per the original order.

Name of the Stenographer : G.K.Jadhav
Court : Court No. 20, Aurangabad.
Date of Order : 14/06/2024
Order signed by the
presiding officer on : 19/06/2024
Order uploaded on : 19/06/2024