

MISC. CIVIL APPEAL NO. 01 OF 2018
 TUKARAM WAGMARE & OTHS. VS. SHRIRAM
 JUDGMENT EXH.[CONTD.
 CNR-: MHLA04-000022-2018

Received on 12.01.2018
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 Decided on 07.06.2018
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 00.04.0025

IN THE COURT OF DISTRICT JUDGE, AHMEDPUR.

[Presided over by S.G.Deshmukh, District
 Judge-1, Ahmedpur]

MISCELLANEOUS CIVIL APPEAL NO.01/2018.

CNR-:MHLA04-000022-2018

EXH.[]

1. Tukaram s/o Ramchandre
 Wagmare, Age 75 yrs, Occ.
 Agri.
2. Kondabai w/o Baburao
 Samukhrao, Age 60 yrs,
 Occ. H.H.
 Both R/o Shirur Tajband,
 Tq. Ahmedpur, Dist. Latur.
3. Pandurang s/o Tukaram
 Wagmare, Age 50 yrs, Occ.
 Labour, R/o Shirur Tajband,
 At present Sathe Nager
 Deuli Nagpuli Bhiwandi,
 Tq. Bhiwandi, Dist. Thane.

APPELLANTS
 (ORI.
 DEFENDANTS)

Versus

Shriram s/o Sopanrao
 Wagmare, Age 69 yrs, Occ.
 Agri., R/o Sathe Nager
 behand Samajmandir,
 Shirur Tajband, Tq. Ahmadpur,
 Dist. Latur.

RESPONDENT
 (ORI.
 PLAINTIFF)

Claim :- for perpetual injunction.

Mr.J.U.Poul, Advocate, for the Appellants.

Mr.Madhav Karbhari, Advocate for Respondent.

J U D G M E N T

(Delivered in open Court on 07.06.2018)

By this appeal, defendants from R.C.S.No.583 of 2017 challenged the order dated 02.01.2018 by Joint Civil Judge, J.D., Ahmedpur, below Exh.05.

2. As per appellants, learned trial Court without considering the record, illegally restrained them by an order of temporary injunction. In fact, as per them, learned trial Court granted relief which was not prayed by plaintiff/respondent. The record reveal that, case of the plaintiff/respondent nowhere identified the disputed property i.e., common bandh with specification and thereby obstruction to such bandh found by learned trial Court is illegal. The learned trial Court had not considered the legal provision of Order VII rule 3 of the Code of Civil Procedure, illegally restrained appellants/defendants. Thereby the order of the learned trial Court is illegal on the face of the record, which created complications and is necessary to be quashed and set aside.

3. The respondent/plaintiff objected the appeal,

filing exhaustive say at Exh.16. As per him, learned trial Court considering the record carefully restrained defendants/appellants. The respondent being owner of the landed property bearing Gat No.274 since 1982 is rightly protected by the order of learned trial Court. The other details of the facts mentioned by the respondent are facts of merits of the dispute and are not reproduced.

4. Heard Shri.J.U.Poul, learned Advocate for the appellants/defendants and Shri.Madhav Karbhari, learned Advocate for the respondent/plaintiff.

5. Perused record. Following points arise for my consideration and I answer them with below mentioned reasons:-

SR. NO.	ISSUES	FINDINGS
1	Whether respondent/plaintiff proved that, by destroying common bandh of landed property bearing Sy.No.177 (Gat No.274) of village Shirur Tajband, Tq. Ahmedpur, defendants/appellants creating obstruction to his cultivation ?	'Not Proved'.
	In whose favour prima facie case,	'Not in

2	balance of convenience and irreparable loss is ?	favour of plaintiff/respondent.
3	Whether order of learned trial Court is legal ?	'No.'
4	What order ?	'See final order'.

R E A S O N S

6. **As to Issue No.1** :- The respondent/plaintiff sued appellants/defendants for relief of injunction simplicitor by R.C.S.No.583 of 2017. No additional relief is claimed by respondent/plaintiff. It means it is the responsibility of plaintiff/respondent to establish the obstruction of his right on the part of defendants/appellants. In that regard, firstly, we will reproduce the landed property explained by respondent/plaintiff. Paragraph No.2 of the plaint clarifies that, Sy.No.177 (Gat No.274) is the property owned by respondent /plaintiff from 1982. Furthermore, the said property is surrounded from Western side and Southern side by the land of defendant/appellant Tukaram. Paragraph No.3 of the plaint reveal that, there is a common bandh having 5 Feet width in between land of plaintiff and defendant Tukaram and all defendants in absence of plaintiff destroyed said bandh to the extent of 50

Feet. The above referred story narrated by the plaintiff /respondent is in respect of invasion of his right. It means plaintiff is claiming ownership of Gat No.274 alleged that common bandh which is 5 Feet in width is destroyed by appellants/defendants. In that regard, firstly, we will consider the ownership of respondent/plaintiff towards Gat No.274. It appear from the record that, on 01.04.1982 respondent /plaintiff purchased 20 Gunthas land from one Mahadeo Shetiba Waghmare for Rs.1,000/-. The copy of the sale-deed placed on record clarifies the above fact. It means respondent//plaintiff purchased 20 Gunthas land from Sy.No.177/A. The statement of land consolidation through which gat numbers were prepared out of survey number reveal that, Sy.No.116/3 is Gat No.274. Consequently, the documentary evidence in respect of ownership of plaintiff/respondent clarifies position that, he is not coming before the Court with clean hands, as he neither explained the area nor survey number of the purchased property correctly. In fact, his title deed i.e., copy of the sale-deed dated 01.04.1982 itself not supporting his stand stated in plaint paragraph No.2. Furthermore, the boundaries explained by respondent/ plaintiff in his plaint paragraph No.2 are also not as per his sale-deed dated 01.04.1982. As per sale-deed,

purchased land by the respondent/plaintiff is having another piece of land of plaintiff purchaser towards Eastern side. The boundaries explained by plaintiff in plaint mention Eastern side as "पानंद". Therefore, it is clear that, plaintiff has not explained his purchased property with clarity and thereby such person is not entitled to claim discretionary relief of temporary injunction from Court of law. In fact, property explained by the plaintiff in his plaint is contravention of Order VII Rule 3 of the Civil Procedure Code, which expects that, disputed property shall be mentioned with specification. Furthermore, total reading of plaint story reveal that, defendants destroying the common bandh of the land of plaintiff, trying to obstruct cultivation of plaintiff. In that regard, plaint story reveal that the common bandh is of 5 Feet width and stated to be destroyed to the extent of 50 Feet. Such description in respect of invasion of the right is not acceptable, as when a person states that, common bandh is destroyed, its length, width as well as extent of destruction must be placed before the Court with certainty. Here above facts are missing in the plaint of the plaintiff/respondent and thereby it is difficult to accept that his right towards common bandh is invaded.

7. The complaint filed by plaintiff/respondent to the Police Station, Ahmedpur, dated 09.03.2017 reveal

that, in the year 1980-1981 plaintiff purchased 01 Hectare 60 R land from Gat No.274 and his wife purchased 78 R portion from one Mahadu Shetiba Waghmare. This fact is totally suppressed by appellant/plaintiff in his entire plaint. In fact, sale-deed filed by appellant/plaintiff states that, on 01.04.1982 20 R land & on 01.03.1982, 02 Hectare 02 R was purchased by respondent/plaintiff from Mahadeo Shetiba Waghmare and from Mathurabai Vitthal Kalme respectively. Thus, one would say that, title deeds of the plaintiff are not supporting facts stated in paragraph No.2 of the plaint. In fact, title appearing in sale-deeds is not appearing in plaint story. Consequently, this Court found absence of prima facie case in favour of plaintiff/respondent.

8. The documentary evidence placed on record, particularly complaint submitted to the police authority reveal that, wife of the plaintiff/respondent also complained that, defendants/appellants destroying common bandh of the land. The said wife of the plaintiff is not coming before the Court, as plaintiff.

9. It is needless to say that, evidence by way of affidavit play material role to decide interlocutory application like application for temporary injunction. In

that regard, this Court considered affidavit of plaintiff/respondent in support of application and gathered that, he deviated & developed story of the invasion of his right stating the length of the bandh as 300 Feet and width as 10 Feet. As per him, all defendants destroyed bandh to the extent of 20 Feet. This is not the story appearing in the plaint as well as in the application of the plaintiff/respondent. As far as affidavit of the vendor of the plaintiff is concerned, he appears to be close relative of appellants/defendants. There was one suit in between said vendor and the appellant/defendant Tukaram. It was R.C.S.No.318 of 2014, which appears to be compromised on 13.12.2014. One of the relief was of injunction in that suit. Therefore, affidavit of vendor of plaintiff/respondent stating obstruction is necessary to be considered with caution. As per vendor Mahadeo, Gat no.274 which was sold by him in 1982, was having common bandh of 10 Feet width and 300 Feet in length. As per him, it is a common bandh and there used to be quarrels in respect of cutting down of the trees from the said common bandh. This affidavit evidence being inconsistent with sale-deed as well as plaint of the plaintiff/respondent cannot be reliable to gather invasion of the right of the respondent/plaintiff. So, above discussion reveal that, evidence of affidavit adduced by respondent/plaintiff is also not

trustworthy. Consequently, neither documentary evidence nor evidence by way of affidavit is reliable and thereby this Court hold that, there is no prima facie case placed on record by plaintiff/ respondent. So, point is answered as 'not proved'.

10. **As to Point No.2:-** The discussion in point No.1 established failure of plaintiff/respondent to establish prima facie case. Consequently, loss and inconvenience of plaintiff/respondent is not considerable and thereby point is answered against plaintiff/respondent.

11. **As to Point No.3:-** The learned trial Court in its impugned order found right of the plaintiff/respondent which was not pleaded by him. As per learned trial Court, there occurred obstruction in the way of the plaintiff over common bandh of Western side in between field of the plaintiff and the defendants. In fact, if one consider entire plaint of the plaintiff/respondent, he had not uttered a single word about the right of the way from common bandh. As stated earlier, relief claimed by plaintiff/respondent is injunction simplicitor & no other relief including declaration is claimed. The observation of the learned trial Court to the obstruction of the way in absence of right of declaration are not acceptable, as right of way

which is an easementary right cannot be claimed with the help of relief of injunction simplicitor. Such right is necessary to be prayed with declaration. This fact is totally ignored by the learned trial Court. Furthermore, the trial Court found that, contents of sale-deed show that, there is a way to the filed of plaintiff from common bandh. The learned trial Court failed to consider the area mentioned in the sale-deed as well as boundaries mentioned in it. Thereby observations of the learned trial Court are perverse and not acceptable. Furthermore, learned trial Court failed to consider Order VII Rule 3 of the Civil Procedure Code in respect of identification of the suit property. The reliance placed by learned trial Court which is from paragraph 3 of the plaint that, there is identity of the disputed property. It is a wrong observation when one consider the plaint paragraph No.3. In fact, disputed property is not identified either in the form of boundaries or with an area. Thereby there is contravention of Order VII Rule 3 of the Code of the Civil Procedure and from this angle also observations of the learned trial Court are perverse. So, the impugned order having perverse observations cannot be said to be legal and thereby point is answered accordingly.

12. In the result, setting aside the order of the

learned trial Court, following final order is passed.

ORDER

The appeal is hereby allowed.

The order of Joint Civil Judge, J.D., Ahmedpur, dated 02.01.2018, below Exh.05, restraining defendants, their agents, representatives etc., stands quashed and set aside. Consequently, the injunction clamped against defendants/appellants stand vacated.

No order as to costs.

Decree be drawn up accordingly.

Date:-07.06.2018. [S.G.Deshmukh]
District Judge-1, Ahmedpur.
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