



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5951 OF 2024

Pundlik s/o. Digabar Choudhary,
Age – 78 Years, Occ. Business,
through POA Mahesh Pundlik Choudhary,
Age – 46 years, occ. Business,
r/o. Near Maroti Mandir, Mukhed,
Tq. Mukhed, Dist. Nanded

..Petitioner

Vs.

1. Tahsildar,
Mukhed, Tq.Mukhed, Dist. Nanded

2. Sachin Sakharam Ingole,
Age – 39 Years, Occ. Nil,
r/o Bajang Nagar Mukhed,
Tq. Mukhed, Dist. Nanded

3. The Chief Officer, Municipal Council,
Mukhed, Dist. Nanded

..Respondents

Mr.Vivek Bhavthankar, Advocate for petitioner
Mr.A.M.Gaikwad, Advocate for respondent no.2
Mr.R.S.Shinde, Advocate for respondent no.3

CORAM : AJIT B. KADETHANKAR, J.
DATE : MARCH 11, 2026

ORAL JUDGMENT :-

Heard.

2. Rule. Rule is made returnable forthwith. Heard finally with
the consent of learned counsel for the parties.

Subject-matter:-

3. Refusal by the learned trial court and learned District Judge to grant temporary injunction under Order 39 Rule 1 and 2 of the Code of Criminal Procedure is challenged in this Writ Petition.

Facts :-

4. In Regular Civil Suit No.191 of 2023 instituted by the petitioner against the present respondent in the court of learned Civil Judge, Junior Division, Mukhed, an application below (Exh.5) under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure came to be filed by the petitioner. The subject-matter of the suit is plot no.36, admeasuring 48 ft. x 70 ft. situated in survey No.33 of Taluka Mukhed. It is submitted that the subject-matter property is part and parcel of one Tilak Nagar Grah Nirman Sanstha, Tq. Mukhed, Dist.Nanded.

5. Learned counsel for the petitioner would submit that the petitioner/plaintiff is the lawful owner and possessor of the subject-matter plot. The petitioner/plaintiff was constrained to file the suit since the defendants obstructed and disturbed the petitioner's peaceful possession over the suit plot. As such, the suit was filed and the application below Exh.5 was moved by the plaintiff. Notices

were issued to the defendants. The defendants objected the said application.

6. After hearing the parties at length, learned trial court rejected the application filed by the plaintiff. Rejection of the application filed below Exh.5 was taken up in challenge by the petitioners before learned District Judge, Mukhed vide Misc. Civil Appeal No.18 of 2023. After hearing the parties and going through the impugned order as also the record, learned District Judge concurred with the findings recorded by learned trial court and appeal came to be dismissed on 05.03.2024. Against both the orders, the petitioner/plaintiff are before this court.

Submissions :-

7. Mr.Bhavthankar, learned counsel for the petitioner would submit that the defendant had no concern with the suit property. He would submit that there was ample material placed before learned trial court and the appellate court to show that the petitioner is lawful owner and possessor of the suit property and the respondent/defendant has no concern in respect of the suit property.. He would submit that considering this aspect and unnecessarily keeping reliance on some criminal proceedings that has been

instituted at the behest of the respondent, both learned trial court and the District Court turned down the petitioner's application. He would submit that the petitioner has even instituted certain other proceedings before the competent authorities in respect of mutation entries. As such, Mr.Bhavthankar, learned counsel would pray to allow the Writ Petition as also impose temporary injunction against the respondent till disposal of the Civil Suit.

8. Mr.A.M.Gaikwad, learned counsel for the respondent, objects the Writ Petition. He would rely upon the findings of learned trial court and would specifically point out that the petitioner could not convince the courts below as regards the exact area of the suit plot. He would submit that the object of the application under Order 39 Rule 1 and 2 of C.P.C. is to grant temporary protection to the lawful owner and possessor of the suit property. He would advance his argument that merely ownership may not be sufficient for grant temporary injunction, but a party seeking temporary injunction must prove that he is in possession of the exact area as has been mentioned in the description of the suit property. He would invite my attention to the observations made by learned trial court in the impugned order dated 22.08.2023 at paragraphs 25 to 28, which are as follows:-

25] It is prima-facie seen, though the applicant claims to own the plot No.36, there is no document on record to show that the plot allotted to the applicant by the society was ad-measuring 48x70 feet. At present the applicant has prayed for the temporary injunction to protect his possession over the suit plot, there is two different area of the suit plot stated in pleading and in the document produced on record by the applicant.

Though, the Deputy Superintended of Land Record Mukhed has inspected the site of plot No.36 and adjoining land, as per directions of the non-applicant No.3 Tahsildar, Mukhed while inquiring the complaint of encroaching on road by the applicant, the sketch map and the report given by Deputy Superintended of Land Record Mukhed placed on record have not given fixed boundaries of plot No.36, it is specifically mentioned that the boundaries of the plot No.36 would be fixed after receiving the sanctioned sketch map. In such circumstances, though it is vaguely mentioned in report about the plot No.36 ad-measuring 48x70 feet with the applicant, would not be helpful to support the applicant plea of possessed the suit plot which is ad-measuring 48x70 feet.

26] On the basis of material placed on record, at this juncture prima-facie it is not seen that the applicant has possessed he suit plot which is total ad-measuring 48x70 feet.

The applicant relied on the judgment of the Hon'ble Bombay High Court, in 2011 (G) All MR 15, Baban Naik Vs. Sau. Pramila Uttamrao Yenare and another, it is held that at the time of determination of application for temporary injunction the factum of possession would only be relevant. Whether possession is lawful possession or not would not be a subject matter of inquiry. It would be a premature at this stage to give finding on said issues.

The ratio laid down in aforesaid judgment is not helpful in present case before me because it is prima-facie seen that the applicant is not in possession of total ad-measuring 48x70 feet of the suit plot. The case of the applicant stated that the suit plot is ad-measuring 48x70 feet is not in consonance with the sanctioned layout map produced on record by applicant himself which is shown that the plot No.36 is ad-measuring 50x70 feet.

27] The contention raised by the applicant that there is no document on record showing transferred of open space adm. 10x15 feet by the Tilak Nagar Grah Nirman Sanstha Mukhed for the cause of statue, the non-applicant not disputed plot No.36 owned by the applicant are sufficient to grant the possession of the applicant over the suit plot.

It may have seen from record and the plea of the non-applicant No.1 that the plot No.36 owned by the applicant, it does not mean to infer the area adm. 48x70 feet is in possession of the applicant of plot No.36, when the document produced by the applicant i.e. sanctioned layout not supported the area of the suit plot ad-measuring 48x70 feet.

28] Though the applicant has made out the prima-facie case by showing that the plot No.36 owned by him, it is found that the balance of convenience not lies in favour of the applicant/plaintiff because the total area ad-measuring 48x70 feet of plot No.36 not seen to have possessed by the applicant, therefore the question of protecting his possession for entire area does not arise. I accordingly also recorded that the applicant has also failed to show that he would cause the irreparable loss in case of refusing to grant the temporary injunction as prayed for. The blanket injunction to protect the possession of ad-measuring 48x70 feet area

which is prima-facie not seen in possession of the applicant can not be granted. Hence I answer the points No.01 to 03 in Negative.

Mr.Gaikwad, learned counsel for the respondent, would conclude by submitting that the criminal prosecution which he has referred to the courts, is merely to indicate the conduct of the plaintiff. He would deny that the orders passed by learned Civil Court and as also District court are influenced by the referred criminal prosecution. He therefore prayed for dismissal of the Writ Petition.

9. I have heard learned counsel for both the sides extensively. With their able assistance I have also gone through the paper book and the order passed by learned trial court and learned District Judge.

10. The trial court has observed that prima facie there was some material to believe that the petitioner is a lawful owner of the subject-matter of the suit property, i.e. plot no.36, in survey No.33 of Taluka Mukhed, which is part and parcel of one Tilak Nagar Grah Nirman Sanstha, Tq. Mukhed, Dist.Nanded. However, upon perusal of the documents placed on record, learned trial court found that there was no evidence on record to indicate that the area of the suit

plot no.36 admeasured 48 ft. x 70 ft. Learned trial court has referred in its order that an enquiry was under process by the D.S.L.R. for inspection of the suit plot under the order of the Tahsildar, Mukhed. Learned trial court however observed that in order to clamp temporary injunction against a party, the court must be satisfied of the exact area of the suit plot together with its correct boundaries. As such, for want of convincing prima facie evidence as regards the area of the suit plot learned trial court declined to exercise the jurisdiction for grant of temporary injunction under Order 39 Rule 1 of C.P.C. Learned District Court has also relied upon the findings rendered by learned trial court and dismissed the appeal.

11. I do not find any infirmity in the findings and reasons recorded by learned trial court as also learned District Judge whereby it is concluded that the case was not fit at that juncture to grant temporary injunction in favour of the plaintiff. No jurisdictional error is pointed out during the course of hearing for which interference can be caused despite there being concurrent findings of facts by learned trial court and learned District Judge. True, an application for temporary injunction under Order 39 Rules 1 and 2 of C.P.C. must not be influenced by referring to any criminal prosecution which are instituted by and between the parties to a civil litigation. That itself

will not be a ground to quash and set aside the order passed by learned trial court and confirmed by learned District Judge. As such, the petitioner failed to make out a case for interference under Order 226 of the Constitution of India. The petition is dismissed. Rule is discharged.

12. It is clarified that observations made by learned trial court and learned District Court are only to the extent of the decision on the application filed by the plaintiff for temporary injunction order.

[AJIT B. KADETHANKAR, J.]

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KBP