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Duration :- 7 Years, 6 Months, 9 Days

IN THE COURT OF 2ND JOINT CIVIL JUDGE JUNIOR DIVISION, TASGAON
(Presiding Officer – Sou.T.S. Mahadik)

REGULAR CIVIL SUIT NO.89 OF 2010

Exh.No.157

1. Shri Maruti Baburao Patil,
Age 60 Yrs, Ocu.Aгри.,
R/o.Hatnur, Tal. Tasgaon,
Dist.Sangli.

PLAINTIFF

VERSUS

1. Shri Rajaram Ramrao Patil,
Age 60 Yrs., Occu.Aгри,
R/o. Hatnur, Tal.Tasgaon, Dist. Sangli.
2. Shri Baban Ramrao Patil,
Age 50 Yrs, Occu.Aгри.
R/o. Hatnur, Tal.Tasgaon, Dist. Sangli.
3. Shri Sheetal @ Satish Keshav Patil,
Age Major, Occu. Aгри,
R/o. Hatnur, Tal.Tasgaon, Dist. Sangli.
4. Shri Sachin Keshav Patil
Age Major, Occu. Aгри.,
R/o. Hatnur, Tal.Tasgaon, Dist. Sangli.
5. Akkatai Keshav Patil,
Age 50 Yrs, Occu. Household,
R/o. Hatnur, Tal.Tasgaon, Dist. Sangli.

DEFENDANTS

6. Smt. Chaya Vishnu Patil,
Age 50, Occu. Agri.,
R/o.Vasagade, Tal. Palus, Dist. Sangli.
7. Shri Anil Sampatrao Patil,
Age 42 Yrs, Occu. Agri.,
R/o. Hatnur, Tal.Tasgaon, Dist. Sangli.
8. Smt.Rukmini Sampatrao Patil,
Age 70 Yrs, Occu. Household,
R/o. Hatnur, Tal.Tasgaon, Dist. Sangli.
9. Shri Dadaso Baburao Patil,
Age 68 Yrs, Occu. Agri.,
R/o. Hatnur, Tal.Tasgaon, Dist. Sangli.
10. Bhimrao Baburao Patil,
Deceased through Legal Heirs
- 10/1 Smt.Indubai Bhimrao Patil,
Age 75 Yrs, Occu. Household,
- 10/2 Sou. Nanda Patangrao Patil,
Age 45 Yrs, Occu. Household
- 10/3 Shri Ashok Bhimrao Patil,
Age 38 Yrs, Occu.Aгри.,
- 10/4 Shri Gajanan Bhimrao Patil,
Age 33 Yrs, Occu. Service,
All R/o. Hatnur, Tal.Tasgaon, Dist. Sangli.
11. Shri Mahadev Baburao patil,
Age 55 Yrs, Occu. Service,
R/o. Kalewadi (Tapkirnagar)
Tal and Dist.Pune.

DEFENDANTS

12. Shri Ganpatrao Baburao Patil,
Age Major, Occu. Agri.,
R/o. Hatnur, Tal.Tasgaon, Dist. Sangli.

DEFENDANTS

Suit for perpetual injunction.

Shri. A.B. Shelar, Advocate for Plaintiff
Shri S.M.Patil Advocate for the Defendant Nos.1 to 6

J U D G M E N T
(Delivered on 30.01.2018)

1. Plaintiff has filed present suit for the relief of perpetual injunction.

2. The pleadings of the Plaintiff in short is as under :-

The landed properties bearing gat Nos.963 situated at village Hatnur, Tal. Tasgaon, District Sangli (hereinafter referred to as "Suit property" for the sake of brevity) is purchased by Plaintiff and Defendant Nos.9 to 12 from defendant Nos.1 and 2 and father of defendant Nos.3 and 4 by registered sale deed dated 21.03.1984 registered before Sub-Registrar, Tasgaon at Sr. No.924/1984 and since then suit property is in possession of plaintiff. Accordingly, entry is also recorded in the revenue record. Plaintiff is cultivating crops like Hybrid and Jawar in the suit property.

3. It is further case of the plaintiff that, recently defendant Nos.1 to 6 are causing obstruction to the peaceful possession of plaintiff over the suit

property. They have also filed false applications before Tahasildar and Sub Divisional Officer against the plaintiff. Plaintiff tried to convince them but they did not bothered to listen. Therefore, plaintiff issued notice dtd. 15.07.2009 through his advocate. However, in spite of notice defendants are continued to obstruct plaintiff. Hence, plaintiff has filed this suit and prayed to restrain Defendant Nos.1 to 6 permanently from causing obstruction to the peaceful possession of plaintiff over the suit property.

4. Defendant Nos.1 to 6 by filing W.S. at Exh.19 have resisted this suit and denied the case of the plaintiff. It is their contention that, plaintiffs have not made co-sharers of suit property party to this suit, therefore, suit is barred for the reason of non-joinder of necessary parties. It also barred by the principles of estoppel of equity. It is their contention that plaintiff is never in possession of the suit property. Suit property is in possession of the defendants since 1980. Plaintiff himself has sold the suit property to defendant No.1 on 02.12.1980 vide sale deed No.3877/1980. Since then defendant Nos.1 to 6 are in possession of the suit property. Entry of their names is also recorded to revenue record. Therefore, plaintiff has not come with clean hand before the Court. The suit property is wrongly described. The suit property is in possession of defendant Nos.1 to 6 in common as there is no partition between them. In the mean time plaintiff and defendant Nos.7 to 12 in collusion have recorded their names to the suit property. Therefore, defendant Nos. 1 to 6 have filed complaint application before Tahasildar, Tasgaon and also filed Appeal bearing R.T.S.No.28/2007, before S.D.O.,Miraj and it was decided on 30.06.2008 and matter has been

remanded for re-enquiry to Tahasildar, Tasgaon. In spite of these facts, plaintiff has filed this false suit. Hence, they prayed to dismiss the suit with cost.

5. Defendant Nos.7 to 10, 10/1 to 10/4 though duly served with the suit summons did not appear before the Court. Hence, this suit proceeded ex-parte against them.

6. Defendant No.11 though appeared in the suit in response to the suit summons, failed to file his W.S. in time. Hence, this suit proceeded without his W.S.

7. Defendant Nos.1 to 6 have also filed their counterclaim below Exh.19. It is their contention that, property bearing No.963 situated at village Hatnur, Tal. Tasgaon, Dist Sangli (hereinafter referred to as counterclaim property) is owned and possessed by them. Previously it was having R.S.No.207/2A. However, during consolidation it is re-numbered as gat No.963. Counterclaim property has been sold by Shri Maruti Baburao Patil to them for Rs.2000/- on 02.12.1980 vide T.S.No.3877/1980 before Sub-Registrar, Tasgaon and since then they are in possession of the suit property as owner and possessor.

8. It is their further contention that, they are cultivating crops in the suit property and also paying the government taxes since 1980. However, on 09.06.2008 and since 02.08.2010 plaintiff is trying to enter his

name to the record of rights of the suit property, therefore, defendants have filed this counterclaim and prayed for declaration that they are owner and possessor of the counterclaim property.

9. Plaintiff has filed his W.S. to the counterclaim below Exh.28 and resisted the counterclaim mainly on the ground that, father of defendant Nos.1 to 6 have sold the suit property to the plaintiff in the year 1984 by registered sale deed and since then he is owner and possessor of the suit property. It is the contention of the defendants that cause of action arose on 09.06.2008. However, they have not mentioned any explanation why they have not filed suit against the plaintiff. Counterclaim is barred for non-joinder of necessary parties. On these ground he prayed to dismiss the counterclaim with costs.

10. On the basis of pleading of the parties, following issues are framed by my Ld. Predecessor at Exh.50 to which I have recorded its findings thereon with reasons as under :-

<u>Sr.No</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Whether plaintiff proves that he is in possession of suit property ?	Yes.
2.	Whether plaintiff is entitled to the relief of permanent injunction as prayed for ?	Yes.
3.	Whether Defendant Nos.1 to 6 proves that plaintiff is not having any right, title or interest in the suit property ?	No.
4.	Whether Defendant Nos.1 to 6 are entitled to	No.

	the relief of declaration as prayed for ?	
5.	Whether Defendant Nos.1 to 6 are entitled to recover compensatory costs from the plaintiff ? If yes, how much ?	No.
6.	What order and decree ?	As per final order.

REASONS

11. In order to prove his case plaintiff has examined his power of attorney holder Shri Mahesh Maruti Patil below Exh.63 and P.W.No.2 Pandurang Mhasu Gujale below Exh.70, and P.W.No.3 Laxman Bajirao Patil below Exh.76, P.W.No.4 Shri Jamir Rahimtulla Mulla below Exh.80. In support of his contention plaintiff has also filed on record documentary evidence viz 7/12 extract below Exh.8, 32 to 34, copy of notice below Exh.64, UPC receipt below Exh.65, power of attorney below Exh.66, copy of sale deed below Exh.77, photo bill below Exh.81, CD below Exh.82, photographs below Exhs.83 and 84, M.E.No.146 below Exh.152 and joint map below Exh.153 and closed his evidence vide pursis Exh.85.

12. On the other hand defendants have examined defendant No.1 Rajaram Ramrao Patil below Exh.91, D.W.No.2 Ramesh Bhagwan Patil below Exh.97, D.W.No.3 Shankar Basavraj Ghunki below Exh.110, D.W.No.4 Vilas Baburao Patil below Exh.118, D.W.No.5 Vilas Pandurang Patil below Exh.121. In support of their contention defendants have filed on record documentary evidence viz 7/12 extract of land gat No.963 below Exh.37, Index extract below Exh.38, extract of survey No.207/2A below

Exh.39, 7/12 extract of gat No.963 below Exh.40 and 41, consolidation extract below Exh.43, 7/12 extract of gat No.963 below Exh.44, 141 and 142, 7/12 extract of gat No.967 below Exh.49, photographs below Exh. 111 to 116, photo bill below Exh.117, Khate extract of khate No.551 below Exh.143, 7/12 extract of gat No.144, 7/12 extract of gat No.963 below Exh.145, extract of ferfar No.153 below Exh.145, election ID card of Vilas Patil below Exh.147 and closed their evidence vide pursis Exh.135.

13. Heard Ld. Advocate Shri A.B. Shelar for the Plaintiff and Ld. Advocate Shri S.M. Patil for the Defendants at length.

AS TO ISSUE NO.1 & 3 :-

14. As both the issues are inter-linked with each other, in order to avoid repetition, they are discussed together.

15. Plaintiff come with the case that, Suit property is purchased by Plaintiff and Defendant Nos.9 to 12 from defendant Nos.1 and 2 and father of defendant Nos.3 and 4 on 21.03.1984 by registered sale deed No.924/1984. From the date of purchase suit property is in possession of the plaintiff. Accordingly, entry is recorded in the revenue record. Plaintiff is taking crops like Hybrid and Jawar in the suit property. On the other hand it is the case of the defendants that, suit property is owned and possessed by them. Previously it was having R.S.No.207/2A. However, during consolidation it is re-numbered as gat No.963. Counterclaim

property has been sold by Shri Maruti Baburao Patil to them for Rs.2000/- on 02.12.1980 vide T.S.No.3877/1980 before Sub-Registrar, Tasgaon and since then they are in possession of the suit property as owner and possessor of the same.

16. In order to substantiate his claim plaintiff has examined his power of attorney holder who reiterated the case of the plaintiff in his examination in chief. However in the cross examination he has admitted that, his father sold the suit property on 2.12.1980 for consideration of Rs.2,000/- to defendant No.1 and as per the sale deed of 1980 he has given the possession of sale deed property to defendant No.1. He has further admitted that, his father know about the sale deed executed in the year 1984. Thus, considering the cross examination of defendant, it seems that nothing fruitful came on record to rebut the case of plaintiff.

17. Plaintiff has also examined P.W.No.2 Shri Pandurang Mhasu Gujale who deposed that he is cultivating the land adjacent to the suit property since last 20 to 22 years and he know about the suit property. He further deposed that suit property is purchased by Plaintiff and Defendant Nos.9 to 12 from Ramrao Akaram Patil, Rajaram Ramrao Patil, Keshav Ramrao Patil, Baban Ramrao Patil and since then plaintiff is in possession of the suit property.

18. P.W.No.3 Laxman Bajirao Patil who is attesting witness to the sale deed has specifically deposed that he has signed as a witness on the

sale deed and Ramrao Patil and other 5 have signed on the deed in his presence and proved the sale deed below Exh.77. However, in the cross examination he has admitted that, he has not seen 7/12 extract at the time of sale deed. One Irappa Dhondiram Kambale was other witness to the sale deed. He do not know who told the contents of sale deed. He do not know whether necessary permission was taken or not. Though this witness has given certain admissions in the cross examination, it is pertinent to note here that this witness is attesting witness and sale deed is executed before him and he and other persons present at the time of execution have signed before him. Therefore, the admissions given by this witness is not at all relevant to this case. Therefore, plaintiff has very well proved sale deed by examining attesting witness as per provisions of Section 68 of Indian Evidence Act.

19. In order to prove possession of the plaintiff over the suit property, plaintiff has also examined P.W.No.4 Jamir Rahimtulla Mulla below Exh.80 who is photographer. He has proved the photographs below Exh. 83 and 84 and also proved CD below Exh.82 and receipt Exh.81. As per his contention these photographs pertains to the suit property.

20. On the other hand defendants have examined defendant No.1 Rajaram Ramrao Patil below Exh.91. He reiterated the contents of W.S. in his examination in chief. However, in the cross examination he has admitted that, the suit property has old Survey No.207/2A and thereafter it is converted in to gat No.963, land belonging to plaintiff bearing gat No.964

is situated on the southern side of land gat No.963, on the western side there is land of Bhagwan Laxman Patil, on the northern side there is remaining land bearing gat No.963. He has further admitted that, name of plaintiff to the extent of 8 anna share has been entered to the 7/12 extract of land gat No.963 in the year 1984 and since then he has not made any complaint about the same. He has further admitted that he has not any complaint about the sale deed in respect of suit property executed in favour of plaintiff and possession of plaintiff over the suit property. He do not know about which sale deed he has filed counterclaim. He has no complaint about the sale deed of the year 1984 of plaintiff.

21. In order to support his contention defendants have examined D.W.No.2 Ramesh Bhagwan Patil below Exh.97, D.W.No.4 Vilas Baburao Patil below Exh.118, D.W.No.5 Vilas Pandurang Patil below Exh.121 who are adjacent owners of the suit property. All these witnesses supported the version of defendants in their examination in chief. However D.W.No.2 admitted in his cross examination that he has seen the 7/12 extract in respect of the suit property and there is entry of name of plaintiff over it. D.W.No.4 has specifically admitted the boundaries of suit property mentioned by plaintiff in his plaint.

22. Defendants have also examined D.W.No.3 Shankar Basavraj Ghunki below Exh.110 who is photographer who proved photographs below Exh.111 to 116. However, in the cross examination he has specifically admitted that, he do not know about the land and gat number of which he

snapped the photographs. He has admitted that he was standing in the land and as per the instructions of defendant he snapped the photographs. He has further admitted that defendants have not demanded the CD or negatives of the photographs, hence, he has not given the same to them.

23. It is the case of the plaintiff that he is owner of the suit property bearing gat No.963 by registered sale deed dt. 21.03.1984 bearing Sr.No.924/1984 and he is in possession of the same. In support of his oral evidence, he has also produced documentary evidence such as 7/12 extracts produced below Exhs.8 and 32 to 34. M.E. No.146 filed below Exh.152 shows that entries of the name of plaintiff has been mutated on 7/12 extract of gat No.963 i.e. suit property as per sale deed of 1984 on 31.07.1985. Plaintiff has also proved the sale deed below Exh.77 is duly proved by the attesting witness as per the provisions of Section 68 of Indian Evidence Act which proves the case of the plaintiff. Moreover, defendant has specifically admitted in his cross examination that, name of plaintiff to the extent of 8 anna share has been entered to the 7/12 extract of land gat No.963 since the year 1984 and since then he has not made any complaint about the same. He has further admitted that he has no any complaint about the sale deed in respect of suit property executed in favour of plaintiff and possession of plaintiff over the suit property.

24. It was argued on behalf of plaintiff that entries on 7/12 extract/ revenue record have presumptive value under Section 157 of Maharashtra Land Revenue Code (in short MLRC for the sake of brevity) unless it

rebutted. Undoubtedly the entries in revenue record have presumptive value unless same was rebutted. In this sense, entries in the revenue record are made by a Officer appointed under a statute in performance of his statutory duties. Accordingly, such entries are public documents within the meaning of Section 74 of the Indian Evidence Act and they have presumptive value as per section 157 of MLRC. In view of this discussion, the revenue entries vide 7/12 extract (Exh.8, 32 to 34) have presumptive values of their contents unless rebutted by adducing evidence to the category. Oral evidence of adjacent owners by defendant is not cogent enough to rebut the presumption laid under Section 157 of MLRC. No other evidence is adduced by the defendant to show that the entries made in the revenue record in respect of suit property as regard to possession of the suit property are false, fabricated or that they do not depict the factual position. Thus presumption laid down in Section 157 of MLRC has not been rebutted. Hence, it can be presumed safely that plaintiff is in possession of the suit property.

25. It is the counterclaim of the defendant that property bearing No.963 situated at village Hatnur, Tal. Tasgaon, Dist Sangli (hereinafter referred to as counterclaim property) is owned and possessed by them. Previously it was having R.S.No.207/2A. However, during consolidation it is re-numbered as gat No.963. Counterclaim property has been sold by Shri Maruti Baburao Patil to them for Rs.2000/- on 02.12.1980 vide T.S.No.3877/1980 before Sub-Registrar, Tasgaon and since then they are in possession of the suit property as owner and possessor. On the contrary it is

the case of the plaintiff that, defendant Nos.1 and 2 and father of defendant Nos.3 and 4 have sold the suit property to the plaintiff in the year 1984 by registered sale deed and since then he is owner and possessor of the suit property. It is the contention of the defendants that cause of action arose on 09.06.2008.

After perusal of contentions of both the parties in respect to the counterclaim, it reveals that, plaintiff has no any dispute about the sale deed of the year 1980 and entries before 1984 in the revenue record and exchange of gat numbers of the suit property. It is the case of the plaintiff that he is in possession of the suit property since 1984 i.e. since the date of sale deed. However, the defendants have not adduced any other evidence to show or suggest that they are in possession of the suit property from 1984 till today. If they were really in possession of such portion, then they ought to have take appropriate steps for cancellation of the mutation entry No.146 (Exh.152) which was showing possession of plaintiff and which according to defendants, was wrong. If the defendants were really in possession as they claim, they would have got the record of rights re-mutated so as to show their possession over the suit property.

26. Defendants only pleaded in their Written Statement that he made complaint application in the Office of Tahasildar or Revenue Department and against the said order they filed RTS Appeal No.28/2007 in the Sub-Divisional Office, Miraj and the said Appeal was decided on 30.06.2008 and matter has been remanded towards Office of Tahasildar for

re-inquiry. In support of said contention they filed only notices of said proceeding but they have not filed on record said application or decision which shows that defendants have made complaint about the mutation of the name of plaintiff and about the M.E.No.146. On the contrary defendants have filed only Sale Deed of 1980, M.E.No.8532 which show entry of name of defendants. According to sale deed of 1980 of gat No.207 entry mutated on 25.1.1982. However, as there is sale deed of 1984 in respect of suit property, later sale deed will prevail. Defendants have not specifically proved that they are in possession, nor proved that such steps were taken by them during all these years in respect of the entry of the name of plaintiff in the revenue record. Their inaction to do the same speaks a volume about their alleged possession.

27. The registered sale deed being a public document in view of Section 74(2) of Indian Evidence Act and revenue records also being public document in view of Section 74(1) of the Evidence Act, the defendant can be said to have notice of such sale transaction in view of Section 3 of Transfer of Property Act from the date of execution i.e. from 21.3.1984. Hence, if such sale transaction or sale deed was sham and bogus, the right to sue in respect of thereof accrued as early as on 21.3.1984 when the defendant had constructive notice of the same. As discussed earlier defendants have not show that they have taken effective steps and not adduced any evidence in that respect. As a result their possession indirectly their claim as plaintiff is not having any right, title or interest in the suit property can be taken to mean not proved by the defendants.

28. It was argued on behalf of defendant that, present suit is filed only for injunction without declaration, hence, it is not tenable in the eye of law. In support of his argument he relied on the ratio laid down in the case of Ramji Rai & Others V/s. Jagdish Mallah (Dead) through LRs. & Anr, 2007 (3) All M.R. 371. Hon'ble Supreme Court observed that,

“In the case of perpetual injunction based on protection of possessory title in which the plaintiff alleges that, he is in possession and that his possession is being threatened by the defendant, the plaintiff is entitled to sue for mere injunction without adding a prayer for declaration of his right.”

29. In the present case plaintiff only claimed injunction on the ground that he is in possession of the suit property and his possession being threatened by the defendants, he filed the present suit. Therefore, plaintiff has every right to sue for injunction without adding a prayer for declaration of his right. Therefore, with due respects, the ratio laid down by Hon'ble Supreme Court is perfectly applicable to the plaintiff and not to the defendant. Hence, there is no merit found in the argument of defendant.

30. Advocate for the defendant also argued that, suit is barred by non-joinder of necessary parties. However, defendant neither in W.S. nor in his oral evidence has stated about the parties which are required to be added in the suit. There is no specific allegation about non-joinder of specific party in the suit. Therefore, defendant has failed to prove that suit is barred by non-joinder of necessary parties.

31. It is further argued by the defendant that power of authority has no any authority to depose on behalf of plaintiff. In support of his argument he relied on the case law reported in the case of **Janki Vashdeo Bhojawani & other V/s. Indusind Bank Ltd., & other, 2005(1) Mh.L.J.1170** in which it is observed by Their Lordship that,

“Word acts employed in Order 3 Rule 1 and 2 of the CPC is confined only in respect of acts done by the power of attorney holder in exercise of power granted by the instrument. It would not include deposing in place and instead of the principal. Power of attorney holder can appear as witness in his personal capacity.”

32. In the present case it has been admitted that sale deed of 1984 was not executed by the power of attorney holder in his personal capacity. Hence, his evidence regarding sale deed of 1984 is silent. On the contrary sale deed of 1984 has been proved by the plaintiff by adducing independent evidence in this suit. The power of attorney holder has deposed about possession of plaintiff over the suit property in his personal capacity. Therefore, the issue raised by the defendant is not tenable.

33. Though defendants have denied the boundaries mentioned by the plaintiff in his plaint, in the cross examination defendant as well as his witnesses i.e. adjacent owners have specifically admitted the boundaries around the suit property. Therefore, considering all these facts and circumstances and evidence on record it can very well be said that, plaintiff has proved that he is in possession of the suit property as owner. On the

contrary defendants have failed to prove that, plaintiff is not having any right, title or interest in the suit property. Moreover, defendants has specifically admitted in his cross examination that, He do not know about which sale deed he has filed counterclaim. Therefore, I answer issue No.1 in the affirmative and issue No.3 in the negative.

AS TO ISSUE NO.2 :-

34. It is the specific contention of plaintiff that defendants are causing obstruction to the peaceful possession of plaintiff over the suit property. As discussed earlier it is very well proved by the plaintiff that he is lawful owner and possessor of the suit property. As defendants are denying the ownership and possession of plaintiff over the suit property itself is obstruction to the possession of the plaintiff. Hence, I hold that plaintiff has proved that defendants are causing obstruction to the peaceful possession of plaintiff over the suit property. Hence, I answer Issue No.2 in the affirmative.

AS TO ISSUE NOS.4 AND 5 :-

35. As discussed above, I have already held that plaintiff is lawful owner and possessor of the suit property. Hence, plaintiff is entitled for perpetual injunction as prayed for. On the contrary defendants have failed to prove their case. Therefore, defendants are not entitled for the declaration sought and compensatory cost as prayed by them. Hence, I

answer issue Nos.4 and 5 accordingly and in answer to issue No.6 I proceed to pass the following order :-

ORDER

1. The Suit is decreed with costs.
2. The Counterclaim filed by defendants is hereby dismissed with cost.
3. Defendants or through their agents, servants are hereby perpetually restrained from causing obstruction to the peaceful possession of plaintiff over the suit property.
4. Decree be drawn up accordingly.

Tasgaon.

Date : 30.01.2018

(Sou.T.S. Mahadik)
2nd Jt.Civil Judge,Jr.Divn.,Tasgaon.

