


MHAH050003522022 	<p style="text-align: center;"><u>ORDER BELOW EXH. 05 IN R.C.S. NO.111 /2022.</u></p> <p style="text-align: center;"><u>Suryabhan Mohan Vaditake</u></p> <p style="text-align: center;"><u>Vs.</u></p> <p style="text-align: center;"><u>Vimal Baburao Vaditake & other 1</u></p>
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This is an application under Order 39 Rule 1 and 2 of the Code of civil Procedure filed by plaintiff for grant of temporary injunction to restrain the defendants from obstructing his possession over the suit property, during pendency of the suit.

2. The suit property is consisting of gut no.5 admeasuring 24R, situated at village Galnimb, Tal. Shrirampur, Dist. Ahmednagar having boundaries as under :-

Towards East	Gut no.3
Towards West	Gut no.5
Towards South	Canal
Towards North	Boundary Road

3. It is the case of the plaintiff that the suit property is purchased by his father from the husband and father of defendant no.1 and 2 respectively by way of registered sale deed dated 22.04.1994. Since then, he is in possession of the suit property as owner thereof. The defendants are not having any rights, title or interest in the suit property inspite of which they obstruct the plaintiff from enjoying its possession. He has tried to give understanding to the defendants

through the respected villagers however, the defendants have continued to obstruct his possession over the suit property. On 24.04.2022, when he was cultivating the suit property with his wife, the defendants trespassed into the suit property and threatened to the plaintiff by claiming that the suit property is belonging to them and he should not enter the same. They have threatened to kill him due to which an offence under Section 323, 504, 506 of the Indian Penal Code was registered against them by him. The plaintiff contended that he is an handicapped person serving as a teacher. By taking advantage of his absence in the suit property, the defendants continuously obstruct the peaceful possession of the suit property and they are trying to dispossess him. Therefore, he prayed for grant of injunction.

4. The defendant no.2 vide his written statement cum say at Exh.16 (adopted by defendant no.1 vide pursis Exh.19) denied and disputed the claim of the plaintiff. They submitted that plaintiff is the brother-in-law of defendant no.1 and paternal uncle of defendant no.2. The plaintiff had got executed the sale deed of the suit property by practicing fraud on their husband and father respectively i.e. deceased Baburao Mohan Vaditake, as he was habituated to liquor. The defendants and daughters of deceased Baburao are his legal heirs. They are having 0.20 R land in gut no.5. The plaintiff is trying to grab the said property due to which he has filed the present case as well as other cases against them. He has shown incorrect boundaries of the suit properties in the suit. The suit property was not measured at the time of sale deed dated 22.04.1994 and therefore, its area is at variance. As the boundaries of the suit property and the property of defendants is

not fixed, the plaintiff is trying to dispossess the defendants from the property owned by them and in such an attempt he has filed the present suit. Therefore, he prayed for dismissal of the application.

5. Considering the rival pleadings of the parties and documents produced in support thereof following points arise for my determination to which I record my findings thereon for reasons to follow :-

Sr.No.	Points	Findings
1.	Whether the plaintiff has prima-facie case in her favour ?	In the affirmative.
2.	Whether the balance of convenience lie in favour of plaintiff ?	In the affirmative.
3.	Whether the plaintiff would suffer irreparable loss if injunction is refused ?	In the affirmative.
4.	What order ?	As per final order

REASONS

6. Heard learned counsel for both the parties.

7. Perused 7/12 extract of the suit property, sale deed dated 22.04.1994, affidavits of the parties.

8. Before proceeding to discuss the facts of the case, it must be stated that the grant or refusal of temporary injunction is an equitable relief based on the principles of justice, equity and good conscience. A person seeking equity must do equity. It is also settled position of law

that a person seeking equitable relief must approach the court with truthful facts so as to establish his entitlement to the discretionary relief of temporary injunction.

As to point nos.1 to 3 :-

9. The facts of the case lie in very narrow compass. The plaintiff as owner of the suit property has claimed injunction against third parties by contending that they are trying to interfere in his possession over the suit property. The defendants, who are the sister-in-law and nephew of the plaintiff have resisted the application by contending that the plaintiff has got executed the sale deed of the suit property from their predecessor in title i.e. Baburao Mohan Vaditake (since deceased) by playing fraud upon him as he was a habitual drunker. As far as the grant or refusal of injunction is concerned, it being an equitable relief, the entitlement of the party to such relief on the basis of his possession and its lawfulness assumes importance. Admittedly, the plaintiff's father had purchased the suit property by way of registered sale deed on 22.04.1994. A perusal of sale deed show that after purchasing the suit property, the plaintiff is enjoying its possession as owner thereof. There is absolutely no justification for the defendants to interfere in his possession by contending that the sale deed is executed by practicing fraud. The sale deed being a registered document has got presumptive value. Its mutation entries are also effected in the revenue record of the suit property. Therefore, the plaintiff has established prima-facie case in his favour. Hence, I answer point no.1 in affirmative.

As to point no.2 to 4 :-

10. It is clear from record that the plaintiff being the lawful owner of the suit property is entitled to enjoy its possession without any obstruction. On the contrary, there is nothing on record to indicate that the defendants have any right to disturb the possession of the plaintiff over the suit property. Accordingly, the balance of convenience lie in favour of plaintiff and he would suffer irreparable injury in the event of refusal of temporary injunction. Hence, I answer point nos. 2 and 3 in affirmative and proceed to pass following order.:-

ORDER

1. Application Exh.5 is partly allowed.
2. The defendants are restrained from interfering in the possession of the plaintiff over the suit property during pendency of the suit.
3. Cost in cause.

Date: 10/11/2023

(R.B.Giri)
Civil Judge Sr. Division,
Shrirampur.