

MHAH080007692023

Sunil Ramesh Kolhe etc.



Vs.

Sopan Shankar Tambe etc.

ORDER BELOW EXH. 5 IN R.C.S. 413/2023

This is suit for specific performance and permanent injunction along with an application for interim injunction under order XXXIX rule 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter in short referred as 'C.P.C.') to restrain defendants or their agent or any person on their behalf from obstructing plaintiffs' possession over the suit property and from creating third party interest into the suit property by alienating the same by way of mortgage, gift, sale deed. Application is well supported by an affidavit at (Exh.6)

Description of the suit property -

2. The agricultural land bearing Survey No. 449/1, out of that an area 0.60 HR having an assessment 1.22 pai, situated at village - Chinchpur budruk, Tal. Sangamner, Dist. Ahmednagar is the suit property which is more particularly described in plaint para no. 1 of the plaint. Boundaries are given as under-

At east – survey no.450 pai

At south – survey no. 449 pai

At west – Loni Phata - Chinchpur road

At north – survey no. 449/2

[Hereinafter, referred as the 'Suit Property.']

The pith and substance of plaintiffs' case is -

3. The plaintiffs' have filed the present suit seeking relief of specific performance, permanent injunction and for other reliefs in respect of the suit property. Originally the suit property was owned by family of plaintiffs. The said property get alienated in name of father of defendants in the year 1968 by making fraud. Thereafter, meetings have been occurred. Family of defendants accepted possession of family of plaintiffs over the suit property and prepared agreement to sale (Visar Pavati) in name of grandmother of plaintiffs in the year 1974. Permission is required since, land is of rehabilitation. Hence, sale deed is not executed. Father of defendants used to avoid execution of Visar pavati. Meeting was done between them in front of panchas. It was agreed to make gift of 5 acre land to Aashram and remaining land is to be sold to plaintiffs. At that time, there is encumbrance of rehabilitation on 4 acre land. Accordingly, remaining land except 4 acre land has been sold to grandmother of plaintiffs. Land of 5 acre has been donated to Aaashram. Father of defendants admitted that land under rehabilitation is also owned by family of plaintiffs and executed separate agreement to sale. As per government resolutions record of land has been mutated. Out of 4 acre land, one hector land has been minimized from the revenue record of the land. Only area of 60 R remained on documents in name of family of defendants.

Family of plaintiffs was in possession of said 60R area. Grand mother of plaintiffs has been allotted area out of Gat No. 449 by way of partition in name of plaintiffs in the year 2003. The family of plaintiffs is in possession of an area of 0.60R mentioned into the plaint. Defendants used to avoid to execute Visar Pavati in spite of frequent requests made by plaintiffs. Meanwhile, defendants have filed suit bearing R.C.S.No. 794.2022 against plaintiffs. Plaintiffs received summons for the same. Defendants used to meet plaintiffs. Plaintiffs remain absent in the suit on pretext of compromise talks occurred between them and defendants. Plaintiffs have sent notice to defendants for specific performance of sale deed.

4. According to plaintiffs, they are in possession of the suit property. Subsequently, defendants are obstructing possession of plaintiffs over the suit property. The defendants have executed agreement to sale (Visar pavati) in respect of the suit property in name of family of plaintiffs in the year 1974. Now, defendants are trying to alienate the suit property. Hence, plaintiffs are constrained to file present suit. It will take much time to decide the suit finally. If injunction is not granted in favour of plaintiffs, it will cause irreparable loss to plaintiffs. Plaintiffs have prima facie case. Balance of convenience lies in their favour. Hence, plaintiffs prayed to grant temporary injunction. Hence, the application.

5. Defendants have appeared in the suit and filed their

common say and written statement at Exh. 30. They all contested the application on ground that, grounds in the application are false and imaginary. They have denied the description of the suit property. According to them, there is no proper identification of the suit property. Suit of plaintiffs is not tenable. Plaintiffs have no concern with the suit property. No cause of action arose to file the present suit. Defendants have previously filed suit for injunction against plaintiffs. Temporary injunction has been granted against plaintiffs. In order to counter that suit, plaintiffs have filed present false suit. Plaintiffs and defendants are adjacent land holders. In order to grab the ancestral land of defendants, plaintiffs have filed the present suit. Plaintiffs does not come with clean hands. They have concealed true facts from the court. In order to cause suffering to defendants, plaintiffs have filed present false suit. Plaintiffs have no prims-facie case. Balance of convenience lies in the favour of defendants. Therefore, defendants have prayed to dismiss the application.

6. Heard learned advocate for plaintiffs Shri. G. R. Mendre for plaintiffs and learned advocate for defendants Shri. B. S. Shinde at length.

7. On rival contentions raised by both parties in their pleadings and documentary evidence produced on the record, argument advanced by both advocates, following points arise for my determination and I have recorded my findings along with reasons are as follows;

| Sr.No. | <u>POINTS</u> | <u>FINDINGS</u> |
|--------|---|---|
| 1. | Whether plaintiffs have made out : prima-facie case ? | No |
| 2. | Whether the balance of convenience : lies in favour of plaintiffs? | Yes. |
| 3. | Whether plaintiffs will suffer : irreparable loss, if the order of injunction is not granted in their favour ? | Yes. |
| 4. | What order ? | The application is partly allowed. |

REASONS

8. Ld. Advocate for the plaintiffs have relied on copy of registered agreement to sale bearing deed no. 1218/1974 dt. 20.05.1974, copy of registered agreement dt. 27.03.1992, copy of registered sale deed dt. 27.03.1992, office copy of registered notice dt. 17.04.2023 sent by plaintiffs to defendants, postal receipts, reply notice dt. 24.04.2023 sent by defendants to plaintiffs, acknowledgment receipts, copies of extracts of mutation entries no. 2066, 4609, 1783, 3712, affidavit dt. 28.04.2023 executed by plaintiff no.1 namely Sunil Ramesh Kolhe, copy of proposed draft of sale deed, copy of 7/12

extract of Gat No.449/1 of village Chinchpur Budruk, Tal. Sangamner filed along with list vide Exh. 3, 41. On the contrary, advocate for defendants have relied on certified copy of application (Exh.5) along with order dt. 21.01.2023, copy of 7/12 extract of Gat No. 449/1, copy of extract of mutation entry no. 6642, copy of decree in R.C.S. No. 490/2020, filed along with list at Exh.38.

9. It is not in a dispute that -

- a. Plaintiffs and defendants are adjacent land holders.
- b. Gat No. 449 of village - Chinchpur Budruk, Tal. Sangamner bears old survey no.156.

AS TO POINT NO.1 TO 3 -

10. All points are interlinked, hence, in order to avoid repetition of facts all points taken for discussion altogether.

11. It is not in dispute that, plaintiffs and defendants are adjacent land holders. It is the case of plaintiffs that, the father of defendants namely Shankar Baburao Tambe has executed agreement to sale with respect to the suit property bearing deed no.1218/1974 in favour of grand mother of plaintiffs Housabai Bhikaji Kolhe on 20.05.1974. In spite of frequent requests made by plaintiffs, defendants used to avoid specific performance of agreement to sale

dt.20.05.1974. According to plaintiffs, since the execution of agreement to sale dt. 20.05.1974 they are in possession of the suit property. According to plaintiffs, defendants are obstructing possession of plaintiffs over the suit property. Similarly, defendants are trying to alienate the suit property by way of gift or sale deed or mortgage. In support of plea, plaintiffs have filed copy of 7/12 extract of the suit property i.e Survey no.449/1 pai area 0.60HR , copy of agreement to sale dt. 20.05.1974 on the record. Upon it's perusal, prima-facie it appears that name of defendant no.1 has been entered into the occupier column of 7/12 extract of survey no.449/1 against the suit property i.e. an area 0.60HR. Also, it reveals that, name of plaintiffs have been mentioned into 7/12 extract of the survey no. 449/1 as co-sharers against their separate specific areas. Also, it reveals that, defendant no.1 is in possession of the suit property and not the plaintiffs. Also, copy of agreement to sale dt. 20.05.1974 reveals that father of defendants namely Shankar Baburao Tambe has executed agreement to sale with respect to Gat No.449 of village - Chinchpur in favour of grand mother of plaintiffs namely Housabai Bhikaji Kolhe for the consideration amount of Rs. 5000/-. It bears signatures of Shankar Tambe, of witnesses and thumb impression of Housabai Kolhe. It is registered document. Similarly, copy of sale deed dt. 27.03.1992 reveals that defendant no.2 has sold out an area 2.90HR out of Gat No.449 to Housabai Kolhe for consideration amount of Rs.1 lakh. Accordingly, registered sale deed has been executed.

On the same date, possession of the said area has been handed over to Housabai Kolhe. Copy of agreement to sale dt. 20.05.1974 shows that plaintiffs have some right and interest into the suit property. Therefore, prima facie case exists in favour of defendants.

12. The 7/12 extract is being public document, it carries presumption of genuineness as per section 157 of the Maharashtra Land Revenue Code, 1966. On the other hand, plaintiffs have not put forth any rebuttal documentary evidence on the record which shows that, the entry upon 7/12 extract is false or they are in possession of the suit property.

13. Add to this, copy of order below interim application in RCS No.794.2022 dt. 21.01.2023 reveals that, the suit property in both suits is the same, also; plaintiffs in present suit are restrained from obstructing possession of defendants in present suit over the suit property.

14. In my view, plaintiffs have succeeded to establish the prima-facie case about their right and interest lying into the suit property. Similarly, they have failed to establish their possession over the suit property. It prima-facie appears from documentary evidence that, defendant No. 1 is in lawful possession of the suit property. Plaintiffs have prima facie failed to prove that revenue entries are false. Therefore, it is duty of the court to protect possession of defendants over the suit property, whereas to protect right

and interest of plaintiffs lying into the suit property. I am of the opinion that, plaintiffs will be liable for any hardship in case temporary injunction with respect to alienation of the suit property is not granted in their favour and the vice-versa. Therefore, balance of convenience lies in favour of plaintiffs. By allowing this application with respect to alienation relief, defendants will not suffer any loss. On the contrary, if application is dismissed with respect to alienation relief, the plaintiffs will suffer greater loss. It will cause multiplicity of proceedings. Therefore, I have answered point no. 1 to 3, accordingly.

AS TO POINT NO.4 -

15. The plaintiffs have succeeded to establish the golden rules i.e. balance of convenience and irreparable loss only which are required for issuance of temporary injunction against defendants. Therefore, application deserves to be partly allowed. Cost of this application shall follow the event. Hence, in answer to point no. 4, I pass the following order -

ORDER

1. The application (Exh.5) is partly allowed.
2. The defendants are hereby restrained temporarily from alienating the suit property by way of sale, gift, mortgage or in any other manner and creating third party interest

therein till the disposal of main suit or until further order.

3. The prayer of plaintiffs with respect to temporary injunction against obstruction to possession at hands of defendants is hereby dismissed.
4. Costs in cause.

Sangamner.
Date : 03.09.2025.

(K.K.Patil)
2nd Jt. Civil Judge, Jr. Dn.,
Sangamner.