

MHAH080013662019

**Regular Civil Suit No. 757/2019****(Radhakisan Kashinath Deshmukh and others V/s Mukesh****Dnyanshwar Misal)****(C.N.R. - MHAH08 - 001366 - 2019)****Order passed below application at Exh. No. 5**

1. The present suit is filed by the plaintiffs for declaration, possession and injunction against the defendant. The present application is filed for temporary injunction against the defendant to restrain him from carrying out any construction in the suit property and to stop the ongoing construction under Order XXXXI, Rule 1 of the Code of Civil Procedure.
2. Plaintiffs submitted that, the defendant has encroached upon the suit property 0.50 R. out of Survey No. 35/1 situated at Sangamner Budruk, Taluka Sangamner, District Ahmednagar, more specifically mentioned in para I of the plaint.
3. They further submitted that, the defendant has not taken permission from Sangamner Municipality for construction of house on the suit property. The defendant is stating that he is in possession of the suit property according to the notarized agreement of sale

executed by Bajaba Kushaba Mhaske-Kul(कुळ). However, Bajaba Kushaba Mhaske-Kul(कुळ) has no right over the suit property and also he has no right to execute such notarized document. In such circumstances the defendant has no right over the suit property and he is carrying out illegal construction on the suit property. They further submitted that the plaintiffs had made an application to Tahasildar, Sangamner, regarding the same and he has given notice to the defendant on 14.06.2019 under Section 54 of the Maharashtra Regional and Town Planning Act, 1966 to remove ongoing construction. However, the defendant has still continued the construction. The suit property is agricultural land hence, the present application be allowed.

4. On the other hand, the defendant has filed his written statement and say at Exh. 16. He submitted that, on 12.03.2010 Bajaba Kushaba Mhaske through his general power of attorney Namdeo Karbhari Shinde executed an agreement of sale in the name of Anuradha Mukesh Misal, wife of defendant. On the said date they handed over possession of the suit property to the wife of the defendant. Bajaba Kushaba Mhaske and his brother Rambhau and Balu and others were in possession of the suit property being Kul(कुळ). Hence, they had right to enjoy the suit property in view of which they sold the suit property to the wife of the defendant. He further submitted that, the stated construction was done before and it is not recent. There are other house constructions near the suit property, of the people who purchased their respective land from Kul(कुळ). There were dispute between the Kul(कुळ) and plaintiffs and in furtherance of

the same, Bajaba Kushaba Mhaske, Namdeo Karbhari Shinde and others have done compromise with the plaintiffs in MRT, Aurangabad. At the time of compromise, plaintiff were aware of the fact that Bajaba Kushaba Mhaske and Namdeo Shinde had sold the part of Survey No.35/1 to the wife of the plaintiffs and other persons. However, at the time of compromise, the parties in compromise did not take any permission of wife of the defendant. He further submitted that, his wife has purchased the suit property from Mhaske and Shinde for consideration of Rs. 61,000/-. Hence, plaintiffs have no right to question the ownership and possession of the defendant and his wife over the suit property. Hence, the application be rejected.

5. Perused the record. The points which arise for my determination along-with findings and reasons thereon are as follows:

Sr. Nos.	Points	Findings
1.	Whether plaintiffs have made-out the <i>prima facie</i> case in their favour ?	Yes.
2.	Whether the balance of convenience tilts in favor of plaintiffs ?	Yes.
3.	Whether plaintiffs will suffer irreparable loss if the temporary injunction is not granted in their favor ?	Yes.

4.	What order ?	The application is allowed.
----	--------------	-----------------------------

Documents-

6. Plaintiffs have filed 7/12 extract of Survey No. 35/1, true copy of the notice given by Sangamner Municipal Council to the defendant dated 14.06.2019 along with list at Exh. 3. They have filed the photographs of the alleged construction dated 27.06.2019 along with list at Exh. 15 and photographs dated 26.07.2019 along with list Exh. 24. They have further filed photocopies of the documents relating to the proceeding before the Tahasildar, Kopargaon, Mutation Entry No. 26209 in Sangamner Budruk, an application filed with the Sangamner Municipality dated 27.05.2019 by plaintiff Nos. 1 and 2, copy of FIR filed in Sangamner City Police Station on 25.05.2019 by plaintiff No. 1. The documents relating to the proceeding before Maharashtra Revenue Tribunal, Aurangabad in Revision Application No. 59/B/2012/Ahmednagar along with list at Exh. 20. On the other hand the defendant has filed the photographs of the suit property dated 22.07.2019 along with list at Exh. 22. He has further filed photocopy of the agreement of sale along with list at Exh. 26.

7. Heard learned advocates for both parties.

8. Learned advocate for plaintiffs argued that, Survey No. 35/1 is situated besides the Pumping Station, Sangamner Budruk in the vicinity of Sangamner Municipality. The suit property was *Vatan*

Land and it was in the name of Kisan Gyanuji Deshmukh and thereafter his legal heirs were brought on record whose names were entered on 7/12 extracts. Plaintiffs and their predecessors used to reside at village Jakhori, Taluka Sangamner, District Ahmednagar which is situated 8 to 10 Kms away from the Survey No. 35/1. Due to this reason, they had given the suit property to the father of Namdeo Karbhari Shinde and Bajaba Kushaba Mhaske and others on wages. However, they tried to initiate proceeding for *Kul(कुळ)* in Tahasildar Office. However, it was held that, the Survey No. 35/1 is in the vicinity of the Municipality due to which it cannot be purchased by *Kul(कुळ)*. However, their names were present on 7/12 extract in the column of "other rights". Further, in Revision Application No. 59/B/2012/Ahmednagar in MRT, Aurangabad, the parties came to compromise and in furtherance of the same by mutation entry number 26206 the names of *Kul(कुळ)* were removed from the 7/12 extract and they have no right on the suit property. During the said proceeding, Bajaba Kushaba Mhaske through his GPA holder Namdeo Karbhari Shinde have executed bogus agreement of sale in the name of wife of the defendant. In such circumstances, the defendant has no right over the suit property. The said agreement of sale is not registered. Also, there is no sale-deed in furtherance of the agreement of sale. The agreement of sale and sale-deed is required to be registered under Section 17 of the Registration Act for giving possession of the suit property. Hence, the aforesaid agreement of sale is not legal and there is no transfer of interest in the suit property to the wife of the defendant. Also Survey No. 35/1 being agricultural land, the permission of Sangamner Municipality is required for constructing the

house property. Plaintiffs have filed the notice given by Sangamner Municipal Council on 14.06.2019 to the defendant to stop the alleged construction and also to remove the same within 30 days. However, the defendant has not obeyed the said notice. If the defendant continues the alleged construction plaintiffs will suffer irreparable loss. Hence, he submitted that, the application be allowed.

9. Learned advocate for the defendant argued that plaintiffs have not filed rough sketch map as per Order VII, Rule 3 of the Code of Civil Procedure to show the exact position of the suit property in Survey No. 35/1. Hence, the suit property is not sufficiently identified. The defendant and his wife are in possession of the suit property since 12.03.2010 i.e. the date of agreement of sale. There are other house properties besides the suit property in Survey No. 35/1. Plaintiffs have not taken any action against those people as plaintiffs are stating that the suit property is an agricultural land. As the defendant is not in possession being owner of the suit property, plaintiffs have no right as alleged in the present application. Hence, he submitted that, the application be rejected.

Reasons

As to Points No. 1 to 3-

10. The 7/12 extract of Survey No. 35/1 bears the names of plaintiffs for 40 R land. There is no name of wife of the defendant on the 7/12 extract. On perusal of the notice given by Municipal Council, Sangamner under Section 54 of the Maharashtra Regional and Town Planning Act, 1966 dated 14.06.2019, it has been stated to the

defendant to stop and remove the construction on the suit property being illegal. The defendant has filed an agreement of sale dated 12th March 2010 which is notarized document. The said agreement of sale is not registered. Also there is no sale-deed on record in furtherance of the agreement of sale. Hence, there is no document registered under Section 17 of the Registration Act for sale of the suit property in the name of the wife of the defendant. There is no name of wife of the defendant on 7/12 extract for Survey No. 35/1. Hence, presumption of the rights in view of 7/12 extract is unchallenged and it is not rebutted by the defendant.

11. In such circumstances, *prima facie*, the absolute sale of the suit property by Bajaba Kushaba Mhaske and Namdeo Shinde in the name of wife of the defendant cannot be said to have been executed. Also there is question, whether the wife of the defendant is bonafide purchaser of the suit property or not. Hence, the absolute sale and the wife of the defendant being bonafide purchaser or not, are triable issues in the present suit which is to be decided on the merits and on the basis of the evidence by the parties. It is admitted by the defendant that, the document brought on record by the defendant is an agreement of sale. The sale deed is not there on record. Hence, the source of the possession of the defendant is not there on record. Altogether plaintiffs have not filed rough sketch map as per the Order XII, Rule 3 of the Code of Civil Procedure. Considering other circumstances of the case, this technical issue can be deprecated.

12. The compromise was done between plaintiffs and Bajaba

Kushaba Mhaske and others and the document regarding the same of MRT, Aurangabad in Revision Application No. 59/ B/ 2012/ Ahmednagar, prima-facie shows that the plaintiffs have no objection to the transaction of sale happened before the compromise. However, there is no name of wife of defendant mentioned in the said compromise being the purchaser along with other purchasers.

13. All these circumstances prima-facie show that the defendant is not in prima-facie settled possession of the suit property. If the construction is completed by the defendant, it may cause multiplicity of the proceedings in the future. Plaintiffs may suffer irreparable loss in case alleged construction is completed. Hence, plaintiff has prima-facie case. The balance of convenience lies in favour of plaintiffs at the present stage. Also irreparable loss may be caused to plaintiffs if the construction is completed by defendant not being the owner and no legal possession of the suit property. Hence, I answer point Nos. 1 to 3 in affirmative.

As to Point No. 4 -

14. Findings on point Nos. 1 to 3 are already recorded in affirmative. Plaintiffs have filed the present suit against the defendant for declaration, possession and injunction. The trial will take its own course to get completed and till then an irreparable loss would cause to plaintiffs if the defendant completes alleged construction. No irreparable loss would be caused to the defendant if the temporary injunction is granted in favour of plaintiffs. In this backdrop, I am

convinced that the plaintiff will suffer irreparable loss. Hence, in answer to point No. 4, I pass the following order.

Order

1. The application at Exh. No.5 is allowed.

2. The defendant and anybody claiming through him is temporarily restrained from carrying out any construction over the suit property till the disposal of the suit.

3. Costs will abide the main cause.

Date : 02/08/2019.

(S.C. Nirmale)
2nd Jt. Civil Judge, Junior Division,
Sangamner.