

Regular Civil Suit Number 345/2021



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CNR Number MHAH-23-000887-2021

Bapu Baba Mane

..... Plaintiff

Versus

1. Santosh Manik Bhondave

..... Defendants

ORDER BELOW EXHIBIT 5

1. The suit is for perpetual injunction. The suit properties are described in paragraph number 1, 2, 3 of suit. The plaintiff has stated that, he is owner and in possession of suit property described in paragraph number 2 of suit. The plaintiff has stated that, he is possessing the suit property described in paragraph number 3 of suit. The plaintiff is cultivating suit property described in paragraph number 3 of suit and taking crops. The plaintiff has further stated that, defendant number 1 to 6 are trying to interfere with possession of plaintiff over suit properties described in paragraph number 2, 3 of suit. The defendants have illegally caused obstruction to the possession of plaintiff over suit property described in paragraph number 2, 3 of suit. The plaintiff is praying for restraining the defendants by way of temporary injunction and not to disturb peaceful possession of plaintiff over suit properties described in paragraph number 2, 3 of suit.

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2. The defendants number 1 to 6 have filed say and written statement vide Exhibit 23 and stated that, the defendant number 1 to 4 are possessing all the suit properties. The defendant has prayed that application vide exhibit 5 us ti ve relected. The plaintiff has no concern with all suit properties. The plaintiff has no title over all suit properties. Hence, possession of plaintiff cannot be protected.

3. I have perused application vide exhibit 5 and say vide exhibit 23. I have heard both sides. The following points arise for my determination.

Serial Number	Points	Findings
1	Whether plaintiff proves prima facie case in his favour ?	Partly affirmative.
2	Whether plaintiff proves balance of convenience in his favour ?	Partly affirmative.
3	Whether plaintiff proves that he will suffer irreparable loss if the application is rejected ?	Partly affirmative.
4	What is order ?	Application is Partly allowed.

REASONS

As to point number 1 to 3

4. The suit is for perpetual injunction. The plaintiff has stated that, he has purchased suit property described in paragraph number 2 of suit on 25/08/2021 by way of sale deed. Thus, the plaintiff has become owner of suit property described in paragraph number 2 of suit. The defendant number 17 to 20 have executed agreement to sale dated 25/08/2021 in favour of plaintiff. The plaintiff is stating that, he is possessing suit property described in paragraph number 3 of suit. But on perusal of page number 3 of agreement to sale dated 25/08/2021 it reveals that, possession of suit property described in paragraph number 3 of suit will be delivered to plaintiff at the time of execution of sale deed. The plaintiff has further stated that, defendant number 1 to 6 are trying to interfere with possession of plaintiff over suit property described in paragraph number 2, 3 of suit. The defendant number 1 to 6 have illegally caused obstruction to the plaintiff over suit property described in paragraph number 2, 3 of suit.

5. The plaintiff has to establish prima facie case. Prima facie case means true case on the face of it. The plaintiff has filed sale deed dated 25/08/2021 vide list exhibit 3/2. It reveals that the plaintiff is in the possession of suit property described in

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paragraph number 2 of suit. Therefore, plaintiff has established prima facie case in his favor in respect of suit property described in paragraph number 2 of suit. Hence, possession of plaintiff over suit property described in paragraph number 2 of suit is to be protected. The defendants number 1 to 6 have not filed on record any document to establish prima-facie case in respect of suit property described in paragraph number 2 of suit in their favour. The defendant number 17 to 20 have executed agreement to sale dated 25/08/2021 in favour of plaintiff. But, it is mentioned on page number 3 of agreement to sale dated 25/08/2021 that, possession will be delivered to plaintiff at the time of execution of sale deed. Therefore, it becomes clear that, possession of suit property described in paragraph number 3 of suit is not with plaintiff. The plaintiff has not filed any document on record to establish his possession over suit property described in paragraph number 3 of suit. Therefore, there is no prima facie case in favour of plaintiff in respect of suit property described in paragraph number 3 of suit. Hence, relief of temporary injunction cannot be granted to plaintiff in respect of suit property described in paragraph number 3 of suit. The plaintiff has stated that, the defendant number 1 to 6 have caused obstruction to possession of plaintiff. It reveals that, there is obstruction to the possession of plaintiff over suit property described in paragraph number 2 of suit. The defendant number 1 to 6 are threatening to dispossess

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the plaintiff in respect of suit property described in paragraph number 2 of suit. Therefore, the plaintiff has established prima facie case in his favour in respect of suit property described in paragraph number 2 of suit only. More so, if the injunction is not issued in respect of suit property described in paragraph number 2 of suit, then inconvenience would be caused to the plaintiff. The plaintiff will suffer irreparable loss, which cannot be compensated in terms of money, if the injunction is rejected in respect of suit property described in paragraph number 2 of suit. Consequently, the plaintiff has shown balance of convenience in his favour in respect of suit property described in paragraph number 2 of suit. There is nothing on record to show possession of plaintiff prima facie over suit property described in paragraph number 3 of suit. On the other hand, it is mentioned on page number 3 of agreement to sale dated 25/08/2021 that, possession will be delivered to plaintiff at the time of plaintiff in respect of suit property described in paragraph number 3 of suit to establish his possession over it. Hence, relief of temporary injunction cannot be granted to plaintiff in respect of suit property described in paragraph number 3 of suit.

As to point number 4

6. The plaintiff has established prima facie case, and balance of convenience in his favour in respect of suit property described in paragraph number 2 of suit. If the application is rejected in respect of suit property described in paragraph number 2 of suit, it will cause irreparable loss to plaintiff, which cannot be compensated in terms of money. The plaintiff has not established prima facie case in respect of suit property described in paragraph number 3 of suit. Hence, relief of temporary injunction in respect of suit property described in paragraph number 3 of suit cannot be granted. Therefore, the application is to be allowed partly. In the result, the following order is passed.

ORDER

- 1) The application vide exhibit 5 is partly allowed .
- 2) The defendants number 1 to 6 and any other persons on behalf of these defendants are hereby restrained from disturbing peaceful possession of plaintiff over suit property described in paragraph number 2 of suit till final decision of suit.
- 3) The prayer of temporary injunction of plaintiff in respect of suit property described in paragraph number 3 of suit vide exhibit 5 is rejected.

Sd/-

Shrigonda
Date – 07/10/2022

Smt. K. A. Katkar
Joint Civil Judge(J.D.)
Shrigonda.

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-:CERTIFICATE-:

I affirm that, the contents of this pdf file order are same, word for word as per original order.

Case No.	:-	R.C.S. No. 345/2021
Name of Stenographer	:-	Smt. S. V. Jadhav
Court Name	:-	Smt.K.A.Katkar, Jt. Civil Judge, J.D.& J.M.F.C, Shrigonda.
Date of Decision	:-	07/10/2022
Order signed by P.O. on	:-	07/10/2022
Order uploaded on	:-	07/10/2022