

Corrected copy vide order dated 12.04.2024 on Exh.23

Order below Exhibit No.05

CNR. No. MHAH23-001289-2014

The present application has been filed by the Plaintiff no. 01 and 02 for restraining the defendants from causing obstruction to the peaceful possession of the plaintiff over the suit property.

2. It is the case of the Plaintiff that, they are in possession of the suit property since 02.12.1988. It is further the case of the plaintiff that on 24.08.2013. The defendants tried to obstruct the peaceful possession over the suit property by tress-passing in the suit property and illegally moving soil from the suit property. The plaintiffs never agreed to sale the suit property to the defendants and the defendants did not have any right title interest in the suit property and the plaintiff no. 01 and 02 are in possession of the suit property since 02.12.1988. Hence, the present application deserves to be allowed.

03. The defendants filed their say to the present application vide Exh. 15. It is the case of the defendants

that there was a oral agreement to sale dated 02.12.1988 between the father of the plaintiffs Murlidahr and the defendants. It is further the case of the defendant that pursuance to oral agreement of sale deed the defendant was to be in possession of the suit property on 02.12.1988. Hence, the present application filed by the plaintiff is liable to be rejected.

4. I have heard the Ld. Advocate for the parties and perused the record, on hearing the Ld. Advocates for the parties, following points arise for my determination:

| Sr. No. | POINTS | FINDINGS |
|----------------|--|-----------------|
| 1 | Whether the plaintiff prove that, he has made out prima facie case for seeking interim injunction restraining the defendants from causing obstruction to the peaceful possession of the plaintiff over the suit property ? | Yes . |
| 2 | Whether the plaintiff prove that, balance of convenience lies in his favour ? | Yes. |
| 3 | Whether the plaintiff prove that, irreparable loss would be caused to him if the injunction | Yes. |

is not granted in his favour ?

4 What order ?

Application
is allowed.

REASONS

As to Point No.01

5. For the grant of interim injunction in favour of the plaintiffs, the plaintiffs have to establish that, they have prima facie case. Prima facie case means that they have arguable case. The Hon'ble Supreme Court in a catena of cases has held that "*Prima facie case*" means that, the Court should be satisfied that, there is a serious question to be tried at the hearing, and there is a probability of plaintiffs obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. In view of the aforesaid position of law, now, I proceed to determine whether the plaintiffs have made out prima facie case in their favour.

6. Perused the 7/12 extract filed along with list of documents at Exh. 03/01. Perusal of the same reveals that, the name of the plaintiff no. 01 and 02 is mutated in the

occupant column of the suit property. However, perusal of the sale deed dated 02.12.1988 also reveals that, the uncle of the plaintiff Vasant and their grandmother Yashodabai sell the suit property to the defendants. The aforesaid sale deed no where mentions that the father of the plaintiffs i.e. Murlidhar had sold his share i.e. 26R of land in the suit property to the defendants. Hence, I am considered view that the plaintiff have proved that, they are in the possession of the suit property since 02.12.1988.

7. The defendant has not produced any material to prove his defence that a oral agreement to sell was executed between the father of the plaintiff and defendant. Hence, the defence taken by the defence is liable to be rejected.

8. In view of the above facts and circumstances, I am considered opinion that, the plaintiff has prima facie proved that, he is in possession of the suit property. Hence, I am inclined to grant that, temporary injunction in the favour of the plaintiffs restraining the defendant from obstructing the peaceful possession in the suit property.

Hence, I answer point no. 01 in affirmative and record my findings thereon.

As to Point no. 02 and 03

9. I have already held in point no. 01 that, plaintiff are in possession of the suit property since 02.12.1988. Therefore, I am of the considered view that, greater inconvenience would be caused to the plaintiff if injunction is not granted against the defendant to protect their possession.

10. Further, I am of the considered view that, irreparable loss would be caused to the plaintiff if he is allowed to be dispossessed from the suit property. Therefore, I am of the considered view that, irreparable loss would be caused to the plaintiff if injunction is not granted in his favour. In view of the above fact and circumstances I answer point no. 02 and 03 in affirmative and record my findings thereon.

As to point no. 04

11. I have already held that, plaintiffs have made

out prima facie case in their favour. I have also head that, balance of convenience lies in the favour of the plaintiff. I have also held that, irreparable loss caused to the plaintiff if injunction is not granted in their favour. Therefore, I pass the following order:

ORDER

1. Application is allowed.
2. The defendants are restrained from obstructing peaceful possession of the suit property more particularly described in the plaint till disposal of the suit.
3. No order as to cost.

Date: 30.03.2024

(N. P. Baji)
2nd Jt. Civil Judge J.D.,
S h r i g o n d a.

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original judgment.

Name of the Stenographer : D. T. Kasare
Name of the Court : Shri. N. P. Baji,
2nd Jt. C.J.J.D.,
Shrigonda.
Date of Order : 30 -03-2024
Date of PDF : 19-04-2024
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