

CNRMHAH2500 2141 2019

Order below Exh. 5 in RCS NO. 654/2019

(Krushi Utpanna Bajar Samiti Vs Raju Mahadu Khose & Ors.)

Nature of application :

1. Read application at exh. 5.
2. This an application filed by the plaintiff for granting injunction against the defendant not to obstruct in the suit land and not to disturb the peaceful possession of the plaintiff.

The case of the plaintiff in short is as follows :

3. The plaintiff Samiti is formed under Maharashtra Krushi Utpanna Bajar Samiti Act (hereinafter referred as "Samiti" for short). Shri. Shivaji Maruti Pansare is given authority to file documents, affidavits and to look after the court matters on behalf of the Samiti. The plaintiff Samiti has purchased 1H 32R land out of gat no. 4124 from Jayvant Bala Chede and Nana Bala Chede by registered sale deed on 31/05/1982. The plaintiff Samiti has raised godown and tin shed and other government buildings on the said land. On 16/9/2015 the plaintiff Samiti has again purchased 38 guntha land adjacent to the gat no. 4124 towards northern side. The defendants have started encroaching in the suit property gat no. 4124. Plaintiff has filed RCS NO. 214/2019 for measurement. The TILR has filed report in the said suit and submitted that the defendants have made encroachment in 4 guntha land of the plaintiff. Regular Civil Appeal bearing no. 60/2019 was filed in Hon'ble District Court wherein the Appellate court has given status-quo. The other nine co-sharers of the defendants have filed affidavits before the Hon'ble Appellate Court and submitted that they have no concern with the suit land. The appeal was dismissed. The plaintiff filed Writ Petition No. 11774/2019 before the Hon'ble High Court. The plaintiff has withdrawn the said writ petition by the permission of the Hon'ble High

Court after the corrections made by the original owner of the suit land by executing correction deed. Thereafter, the defendants have again started encroaching in the suit land. Hence, this application is filed by the plaintiff for granting injunction against the defendants to restrain them from making encroachment and not to disturb the peaceful possession of the plaintiff.

4. The defendants have filed say vide exh. 34 and denied the contentions of the plaintiff. The defendants have contended that they have purchased OH 8R land from northern side of gat no.4124 by registered sale deed and took possession from the original owner Bhagwant Chede. The defendants did not construct over the said land. Adjacent to the said land there is open ground of the plaintiff Samiti. The defendants gave permission to park the vehicles of the plaintiff on temporary basis. The plaintiff put proposal to purchase the land of the defendants but defendants denied. The plaintiff filed RCS NO. 214/2019 against the defendants to harass them. The interim application in the said suit was dismissed. The plaintiff being aggrieved by this filed RCA No. 60/2019 before Hon'ble District court. The appeal was dismissed. The plaintiff filed Writ Petition before the Hon'ble High Court and it was also dismissed. The plaintiff has purchased OH 38R land from Bhagwant Chede by registered sale deed in which the boundaries of the suit property were not mentioned. The plaintiff has executed the correction deed and mentioned the boundaries which is not legal and void. The plaintiff has filed this suit to harass the defendants. The plaintiff has not made the co-sharers party in the suit who filed affidavits before the Hon'ble District Court. The plaintiff is financially sound and using political pressure trying to purchase the land of the defendants. Hence, the defendants have prayed to reject the application.

5. Following points arise for my consideration and I have given my findings on those points with reasons which are as follows.

Sr. No.	Points	Findings
1	Whether plaintiff has prima facie case in his favour ?	No.
2	Whether balance of convenience lies in favour of plaintiff ?	No.
3	Whether plaintiff will suffer irreparable loss if injunction is not granted in his favour ?	No.
4	What order ?	As per final order.

REASONS

6. The plaintiff has relied on the following documents.
1. Resolution dated 30/09/2019 (exh.7)
 2. 7x12 extract of gat no.4124/1 (exh.8)
 3. 7x12 extract of gat no.4124/2 (exh.9)
 4. Certified copy of Civ. Misc. Appeal No. 60/2019 (exh.10)
 5. certified copy of judgment in Civ. Misc. Appeal No.60/2019 (exh.11)
 6. certified copy of plaint in RCS No.214/1999 (exh.12)
 7. certified copy of decree in RCS No. 241/1999 (exh.13)
 8. certified copy of map of TILR in RCS No. 214/2019 (exh.28)
 9. xerox copy of affidavits of Hasan Amir Raje, Javed Raje, Chandrakant Chede, Balasaheb Kalbhor, Mohammed Raje
 10. Correction deed dated 12/9/2019
 11. sale deed dated 16/9/2015
 12. xerox copy of plaint in RCS NO. 214/2019
 13. Affidavit of Hasan Amir Raje

As to point nos. 1 to 3 :-

7. It is argued by the learned advocate for the plaintiff that plaintiff purchased suit land from Jaywant, Nana, Bhagwan Chede. Defendants started construction in the land of plaintiff so plaintiff filed suit bearing no. 214/2019. In that suit court commissioner was appointed and

map was produced in the court. Map showed that defendant made encroachment in the land of plaintiff to the extent of 4R. Injunction application in RCS NO. 214/2019 was rejected on the ground that boundaries of suit land were not mentioned in the sale deed. Plaintiff later on prepared correction deed and four boundaries of the suit land are mentioned. Defendants along with other persons purchased land. But their land is north-south strip of 8R which is adjacent to the road. The map in RCS NO. 214/2019 clearly shows that defendants made encroachment in the suit land. Defendants earlier filed RCS NO. 241/1999. In that suit defendants mentioned their land as north-west side strip of 8R near the north road. This clearly proves that defendants made encroachment in the land of plaintiff. Further Hasan Raje, Javed Raje, Chandrakant Chede, Balasaheb Kalbhor, Mohammed Raje. These are the purchasers along with the defendant who purchased the land. They have filed affidavits stating that they have purchased the land which is adjacent to the north road. They have no concern with the land of the plaintiff. Hence, he prayed that injunction application deserves to be allowed.

8. Learned advocate for the defendant argued that they have purchased 8R land out of gat no. 4124. They have purchased 8R land which is near to north road. They have purchased the land in the year 1999. Since the sale deed they are in possession of the suit land. Plaintiff asked defendants to sell their land. Defendants denied. Hence, this suit is filed. Plaintiff earlier filed RCS No.214/2019. In that suit plaintiff filed injunction application. That application was rejected by the court. In sale deed of plaintiff four boundaries of suit land were not mentioned. Plaintiff got executed a false correction deed. At the time of making of correction deed the seller had no title to the suit land. Plaintiff filed appeal against the order of injunction application to Hon'ble District Court bearing no. 60/2019. Said appeal was also dismissed. Hon'ble District Court has held that

defendant is in possession of their land which they purchased. Hence, injunction application deserves to be rejected.

9. It is the case of the plaintiff that he is owner of suit land. Plaintiff has to prima facie show that he is owner of the suit land. Admittedly plaintiff purchased 38R land out of gat no. 4124/1 from Chede on 16/9/2015. Further it is admitted position that at the time of the sale deed four boundaries of the suit land were not mentioned. Later on plaintiff got executed the correction deed on 16/9/2019 from Bhagwan Tukaram Chede. Further it is admitted position that defendant purchased 8R land out of gat no. 4124 in the year 1999. Defendants purchased their land prior to the sale deed of the plaintiff.

10. Plaintiff has produced on record the sale deed dated 16/9/2015 and plaintiff has also produced on record the correction deed dated 12/9/2019. The sale deed and correction deed are executed after the sale deed of defendants. It is the case of the plaintiff that defendants made encroachment in the suit land. Plaintiff relied on the map produced by court commissioner in RCS No. 214/2019. Plaintiff further relied on the copy of plaint in RCS No. 241/1999. He also relied on the affidavits filed by some of the purchasers who purchased land with defendants.

11. Map in RCS No. 214/2019 shows the position of land in possession of the defendant as well as in the possession of the plaintiff. It is argued by learned advocate for plaintiff that in RCS No.241/1999 defendant filed a suit against the government. In that suit description of the land of defendants was shown as north-south 8R strip adjacent to the north road. In map produced in RCS No. 214/2019 land of defendants is not shown to be adjacent to the road. Hence, prima facie defendants are not in possession of their land but they are in possession of the land of plaintiff.

Here it is necessary to refer the judgment and order of Hon'ble District Court in Civ. Misc. Appeal No. 60/2019. Hon'ble District Court in para no. 13 of the order has observed as under....

***para no.13** : as against this, the defendants produced their registered sale deed (DAST No. 839/1999). On perusal of the same, it transpires that in all 17 persons have jointly purchased an area to the extent of 0.8R from the said gat no.4124 with specific boundaries. It is specifically mentions that the said 0.8R land is situated on northern side adjacent to the road and running in south-north direction in said gat no.4124. The map produced on record, prima facie appears to show the correct position of the holding of defendants. Thus, it appears that in view of the registered sale deed, the defendants are in possession of their respective area to the extent of 0.8R from the said gat.*

12. The plaintiff has relied on the map and he has argued that defendants are not in possession of 8R land as per the sale deed. Here it needs to be mentioned that Hon'ble District Court in Civ. Misc. Appeal no. 60/2019 has prima facie held that defendants are in possession of 8R land as per their sale deed. While observing this Hon'ble District Court has considered the map of gat no.4124 which is relied on by the plaintiff. Hon'ble District court in Civ. Misc. Appeal No.60/2019 has prima facie held that map produced on record prima facie appears to show the correct position of the holding of the defendants. I am bound by the observations of Hon'ble District Court in Civ. Misc. Appeal No. 60/2019.

13. Plaintiff also relied upon the affidavits of some of the purchasers i.e. Chandrakant Chede, Hasan Raje, Javed Raje, Balasaheb Kalbhor, Mohammed Raje. These affidavits cannot be considered at this stage as Hon'ble District Court in Civ. Misc. Appeal 60/2019 has prima facie observed that defendants are in the possession of their holding as per their

sale deed. Further plaintiff got executed the correction deed much after the sale deed of the defendants. The correction deed is executed after the sale deed of the defendants. The effect of the correction deed and value of affidavit of Hasan Raje, Javed Raje, Chandrakant Chede, Balasaheb Kalbhor, Mohammed Raje can be considered at the time of the trial. At this stage the court has to see the prima facie case. Hon'ble District Court has prima facie observed that defendants are in possession of their holding as per their sale deed. Further description of the land of the defendants in RCS NO. 241/1999 is as per the observations of Hon'ble District Court in Civ. Misc. Appeal No.60/2019. In RCS No. 241/1999 the description of the land of the defendant is mentioned as north-south strip of 8R adjacent to the north road. In para 13 of order of Hon'ble District Court in Civ. Misc. Appeal No.60/2019 it is mentioned that in sale deed it is mentioned that 8R land is situated on north side adjacent to the road and running in south-north direction in the said gat no.4142. The description also matches with the observation of Hon'ble District Court.

14. Learned advocate for the plaintiff relied on the judgment of Hon'ble Sikkim High Court in *Furden Tshering Bhutia Vs. Payjeeb Bhutia Sherpa*. In this case Hon'ble Sikkim High Court granted injunction on the ground that there was construction after judgment of first Appellate Court. In the present case plaintiff failed to prove prima facie case. Hence, with due respect above case law is not applicable in the present case. Though there are allegations that defendant are doing construction in the suit land.

15. Considering the observations of Hon'ble District Court in Civ. Misc. Appeal No. 60/2019 prima facie case does not lie in the favour of the plaintiff. Balance of convenience also does not lie in favour of the plaintiff. Plaintiff will not suffer irreparable loss if injunction is not granted. Considering this I answer point no.1 to 3 in negative.

As to point no. 4 :

16. I answered point no.1 to 3 in the negative. Hence, point no. 4 needs to be answered accordingly. Therefore, the following order.

ORDER

1. Application is rejected.
2. Cost in cause.

Date: 30/12/2019

(D. R. Badave)
C.J.J.D, Parner