

R.C.S No. 05.2021

Nilawati -Vs- Keshav

ORDER BELOW EXH- 5

This is an application for temporary injunction filed by the Plaintiff under Order XXXIX Rule 1, 2, 3 read with section 151 of Code of Civil Procedure, 1908.

2. This suit is for partition, separate possession and declaration regarding agricultural land Gat No-55, admeasuring Area-0.93R out of 1H 33 R out of 1.11HR land situated at Varkhed (Vaghjali), Tal- Barshitakali, Dist- Akola, more particularly described in para-1 of the plaint. (Here-in-after referred to as the **“Suit property.”**)

3. The Plaintiff submits that suit property is ancestral property of Pundlik Sampat Pawar who died on 27.03.2015. The plaintiff and defendant no.1 are the legal heir of the deceased Pundlik. The suit property was given to plaintiff no.1. The plaintiff is in possession and cultivation of the suit property. He further contends that the defendant no.1 has created false will on 19.01.2015 and intends to transfer the suit property in collusion with Talathi of Varkhed.

4. However, the deceased was found dead in suspicious circumstances. The defendant no.2 threatened plaintiff no.1 to dispose from the suit property on the basis of ‘will’. The plaintiff has sown crops of Soyabean and Tur in the suit property. The defendant has no right in the suit property and prayed to restrain the defendants from interfering in the possession of plaintiff no.1 and from creating third party interest in the suit property till disposal of suit.

5. The defendant filed written statement cum reply at **(Exh-13)**. Defendant in his written statement denied the description of the boundaries of the suit property. Defendants submitted that the suit

property was purchased by deceased Pundlik on 30.11.1962 by registered sale-deed and was transferred to defendant no.1 Keshav by registered Will on 19.01.2015. Therefore, defendant no.1 became the owner of Gat no.55 to the extent of 93 R land. He submits that the mutation as per Will has been carried in Revenue record in Mutation on 31.12.2015. Thereafter, the suit property is purchased by defendant no.2 Gajanan Atmaram Gawande on 25.08.2020 by registered sale-deed and mutation accordingly is carried on 28.10.2020. Defendant no.2 is the owner and possessor of the suit property since the sale.

6. The defendant no.1 submits that an area of 40 R in Gat no.55 (Suit property) was purchased by defendant no.2 Gajanan on 26.06.2002 by registered sale-deed. The mutation to that effect is taken in revenue record. Defendants submit that plaintiffs are aware of both sales of the suit property. The plaintiff even objected to the mutation entries in Revenue case 27/2020 and the appeal is dismissed on 01.07.2021. They further submitted that the plaintiff has suppressed the fact of sale-deed by defendant no.2 in the pleading and contended that the suit property is in possession and cultivation as per the registered sale-deed and prayed to reject the application with heavy cost.

7. Perused record of the case. Heard Ld. Advocate for defendant for defendant. After considering pleadings, submissions of the parties and documents filed on record. The following points arise for my determination.

Sr.No.	Points	Findings
1.	Whether the plaintiff has a prima facie case?	No
2.	Whether balance of convenience lies in his favour?	No

3.	Whether plaintiff would suffer irreparable loss if prayer for injunction is refused?	No
4.	What Order?	Application is rejected.

Documents relied by the parties:

8. The plaintiff in support of his case filed documents at List **Exh-4**, copy of Will dt.19.01.2015, Namuna-6 Mutation dt-10.12.2015, copy of objection dt.06.08.2020, 7/12 extract dt.22.08.2019, copy of measurement map, copy of notice of measurement dt.15.03.2022. Defendant filed copy of sale-deed dt.30.11.1962, copy of sale-deed dt.26.06.2002, copy of sale-deed dt.07.03.2018, copy of mutation dt.28.08.2020, copy of 7/12 extract, copy of record of field Namuna-8-A dt.20.11.2020, copy of order of Revenue Court dt.01.07.2021.

Reasons as to point nos. 1 to 3:-

9. In order to avoid repetition of facts all the above points are discussed together.

10. Plaintiff moved this application for temporary injunction against defendants to restrain them from creating any disturbance or obstruction to the peaceful possession of the plaintiff in the suit property. This application is for invoking discretionary relief under Order XXXIX of the Code of Civil Procedure, 1908. The object of granting temporary injunction is a provisional remedy that is invoked to preserve the subject matter in its existing condition till the disposal of the suit. Its main purpose is to prevent dissolution of the plaintiff's right. The foremost reason for usage of relief of temporary injunction is the need for immediate relief to the applicant on the basis of canvassed circumstances that warrants grant of the injunction.

11. At the foremost the plaintiff has to prove that he has prima facie case. To prove prima facie case means the plaintiff must show the existence of a legal right in him to continue in possession of the suit property. The plaintiff no.1 contends that he is in possession of the suit property. To support his contention, he filed the document of registered 'Will' dt.09.01.2005 appears to be executed by the deceased original owner in the name of defendant no.1 Keshav. The mutation after the death of executor on 10.12.2015 in the name of defendant no.1 accordingly.

12. The contention of the plaintiff as to ancestral property does not find support in presence of the documents of sale deed dt.30.11.1962. This sale-deed prima facie reveals purchase of suit property by deceased Pundlik. The defendant has filed sale-deed dt.26.06.2002 which reveals transfer of suit property by deceased father of defendant no.1 to defendant no.2 by registered sale-deed. The submission of defendant no.2 of ownership of suit property is supported by this document. The submission of ownership of suit property cannot be ascertained in absence of relevant documents of title. However, the sale-deed dt.07.03.2018 prima facie reveals sale of 0.93 land from the suit property to defendant no.2. The 7/12 extract dt.21.01.2016 reveals the name of defendant no.1 to the extent of 0.40 R and defendant no.2 for 0.93 R. The revenue documents including 7/12 extracts filed on record prima-facie reveals that the defendants are in possession of the suit property.

13. However, the contention of the plaintiff to the extent of creating disturbance or possessing the suit property is not evident from the record. Moreover, the plaintiff had not produced any convincing documentary evidence or material to substantiate his contention as to ownership or possession at this prima facie stage. The record does not support as to the submission of crops sown in the suit property by the plaintiff. On the contrary the material on record points out towards the

cultivation and possession of the suit land by the defendants. Moreover, perusal of the Revenue documents on record shows that the defendant no.1 and 2 is in possession of the suit property after purchase of the respective land mentioned in the 7/12 extract filed by him.

14. The contention of the plaintiff regarding the disturbance by the defendants does not find any space due to absence of any admissible documentary evidence at this prima facie stage. Moreover, the other contentions of alleged suspicious death of original owner or false Will can be proved during the trial by adducing admissible evidence by the parties. However, the mutation entries in the revenue record are prima facie proof of possession of the defendants to suit property. Plaintiff has failed to establish his prima facie possession over the suit property. The issue of obstruction caused by the defendant to the possession of the plaintiff in the suit property is not prima facie evident from the material on record. Therefore, in my view the plaintiff has not made out prima facie case in his favour.

15. Ld. Counsel for the plaintiff and the plaintiff remained absent since long and there is no argument on their behalf. The pleadings in the application are taken as the submission. The counsel for defendant argued that the contention as to false Will can be proved at the trial is reasonable. Rest of the arguments and submissions are the matter of trial upon adducing admissible evidence by the parties.

16. The execution of Will in the name of the defendant no.1 seems to be the root cause of the matter. The genuineness of which can be adjudicated upon adducing evidence on trial. However, from the material on record it nowhere, suggests prima facie case in favour of plaintiff at this juncture, the defendants appear to be in possession of the respective property. Revenue documents on record shows the suit property in the name and possession of the defendant.

17. In the case of **Seema Arshad Zaheer vs Municipal Corporation of Greater Mumbai, (2006) 5 SCC 282** the Hon'ble Supreme Court has indicated the salient features of prima-facie case as the discretion of the code is exercised to grant a temporary injunction only when the following requirements are made out by the Plaintiff i.e a) *existence of a prima-facie case he has pleaded, necessitating protection of the Plaintiff the rights by the issue for temporary injunction, b) and the need for protection of the Plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights are likely to infringement of the defendant's rights, the balance of convenience tilting in favour of the Plaintiff, c) clear possibility of irreparable injury being caused to the Plaintiff if the temporary injunction is not granted.*"

18. After considering the documentary material available on record the plaintiff in this case had failed to establish requisites of prima facie case in his favour and therefore, the point no.1 is answered in negative accordingly.

19. The Hon'ble Supreme Court in **Best Sellers Retail India (P) Ltd. Vs. Aditya Nirla Nuvo Ltd. AIR 2012 6 SCC 79**, observed that *prima-faice case alone is not sufficient to grant a temporary injunction and can be avoided if the damage is not irreparable if the injunction is not given. In the case of Dalpat Kumar vs Pralhad Singh, (1992) 1 SCC 719*, the Hon'ble Supreme Court, formulated cardinal principle for temporary injunction was considered and observed that *"the party seeking injunction would incur "irreparable injury" to the party seeking relief as a result of non-interference of code and that there is no other remedy except the injunction and the same is needed by the party to protect themselves from the apprehended injury or dispossession."*

20. Therefore, in the light of above rulings and the circumstances of the case and the documents of revenue on record, I hold that the

plaintiff has not made out prima facie case in his favour. Therefore, there arise no question to restrain defendant from creating any obstruction to the possession of the plaintiff over the suit property. Moreover, it appears that the balance of convenience does not tilts in favour of plaintiff.

21. Considering the factual matrix, prima facie it appears that plaintiff would not suffer irreparable loss if the injunction is refused. On the contrary defendant no.1 and 2 would be prejudiced by the issuance of order of temporary injunction. Therefore, I proceed to answer point no 2 to 3 in the negative and pass following order in answer to point no 4.

ORDER

The application is rejected.

Dt.08.11.2023

(A.N.Khatade)

Jt.Civil Judge, Barshitakli.