

R.C.S. No. 133/2015

Order Below Exh. 05

Plaintiffs have filed this application against defendants for temporary prohibitory injunction regarding suit property. It is mentioned in the application that, land Gat no.493 area 1 H 49 R is ancestral and joint family property of plaintiffs no.1 to 3, they are jointly in possession of said land, said land is mutated in the name of plaintiff no.1 as Karta of joint Hindu family. It is further mentioned in the application that, plaintiffs have plotted said land adjacent to the road from western and southern side and they have alienated many plots. On 06.12.2001 plaintiff no.1 has sold a plot measuring 66 x 33 square feet by registered sale deed bearing no.4502/2001 to the defendant no.1. Defendant no.1 has constructed house at eastern side of the plot and there is a space at western side. It is further mentioned in the application that, on 11.06.2002 plaintiff no.2 has sold a plot to defendant no.2 as per sale deed bearing no.3508/2002, its area is 2 R. Due to some technical difficulty, on 20.10.2011 defendant no.1 has executed a notarized deed on a stamp paper in favour of plaintiffs, and he surrendered 2 x 33 square feet area in favour of plaintiffs, accordingly Grampanchayat record is updated. Plaintiffs have further mentioned in the application that, on 26.09.2011 defendant no.1 executed a notarized deed on a stamp paper in favour of plaintiffs no.2 and 3 regarding removing windows etc. fixed by defendant no.2 in the area owned by plaintiffs. Defendants no.1 and 2

had filed R.C.S.No.68/2013 against plaintiffs no.1 to 3. Injunction application filed by plaintiffs in that matter was rejected. M.C.A.No.48/2013 filed against that order was also dismissed on 22.01.2014, finally on 05.11.2014 defendants have withdrawn said suit. Plaintiffs have further mentioned that, they are owner and possessor of land Gat no.493 area 1 H 49 R. Defendants no.1 and 2 are no way concerned with it, in spite of it, on 05.06.2015 they have tried to encroach upon plaintiffs land by placing timber etc., and also tried to put sand on plaintiffs' land, hence plaintiffs tried to stop them, at that time defendant no.1 assaulted plaintiff no.3 by stick, brother of defendant no.1 namely Sanjay and father of defendant no.1 namely Prataprao as well as mother Vijaymala also assaulted plaintiffs, abused them and also threatened them. Defendants are usually obstructing possession of plaintiff in this manner, hence they shall be restrained by way of an injunction regarding Gat no.493 area 1 H 49 R, as shown in map by red colour, in this application, otherwise plaintiffs will suffer irreparable loss. These are contents of the application.

2. Defendants no.1 and 2 have filed say at exh.18. It is mentioned in the say that, facts regarding sale of plot admeasuring 66 x 33 square feet on 06.12.2001 as per sale deed bearing no.4502 to the defendant no.1 is not disputed, however, boundaries in the sale deed as mentioned in the plaint and this application are not correct. Defendants have further mentioned in the say that, it is true that 2 R land has

been sold to defendant no.1. Defendants have also admitted that, plaintiff no.1 has executed registered sale deed in favour of defendant no.2 on 11.06.2002, however they have further mentioned that, boundaries mentioned in the plaint and this application are incorrect. Defendants have further mentioned that, by misrepresentation and fraud plaintiffs have created alleged agreements against defendant no.1 by taking disadvantage of his innocence. Plaintiffs no.2 and 3 have also created a document against defendant no.2 by misrepresentation and fraud, hence defendants are taking action against plaintiffs regarding agreements dated 20.10.2011 and 20.09.2011. Defendants have further mentioned that, those agreements are not registered, hence they are not admissible in evidence. Defendants have further mentioned that, market value of the properties in dispute is exceeding pecuniary jurisdiction of this Court, construction price of house of defendants no.1 and 2 is more than rupees ten lakhs, hence this court has no pecuniary jurisdiction to try the suit. Defendants have further pleaded that, plaintiff no.1 was owner and possessor of land Gat no.493 situated at village Dhanora, plaintiff no.1 has executed registered sale deed bearing no.4502/2001 on 06.12.2001 in favour of defendant no.1. Accordingly defendant no.1 became owner of the plot measuring 2 R, so also plaintiff has also executed registered sale deed in favour of defendant no.2 on 11.6.2002 regarding the plot measuring 66 x 33 square feet, plaintiffs with fraudulent intention have shown false width of the road

passing from the front side of the house and plots of the defendant, as 20 feet, if injunction will be granted as prayed for the defendants will suffer irreparable loss as they have constructed residential premises there and they have spent huge amount for necessary amenities like water, electricity, hence, application be rejected with costs. These are contents of the say filed by defendants.

3. Following points arose from the application and say, points and their findings are mentioned below, along with the reasons as following,

	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether prima facie case is in favour of plaintiffs ?	No
2	Whether balance of convenience is in favour of plaintiffs ?	No
3	Whether plaintiffs will suffer irreparable loss if injunction will not be granted as prayed for?	No
4	What order ?	Application is rejected.

#### REASONS

##### Points no.1 to 3 :

4. The Ld. Advocate for plaintiffs has argued that, previous suit filed by defendant and injunction application filed in that suit are dismissed, plaintiffs ownership as well as

possession over suit property has been proved. The Ld. Advocate for defendant has argued that sale deeds executed by plaintiffs in favour of defendants are not disputed, area of said plots mentioned in the plaint is also not disputed, however without measuring exact width of adjacent road plaintiffs have wrongly mentioned its width as 20 feet in sale deeds. He has further argued that, exact four boundaries, its area as well as description about number etc. of suit property is not described by plaintiffs, hence application be rejected.

5. On the background of these arguments considered contents of application, say and documents filed by both parties. Even though plaintiffs have mentioned in this application that, they have specifically shown in the map attached to this application, the area regarding which injunction is to be granted against defendants, no any such map has been attached to this application. Plaintiffs have attached hand sketch of suit property along with the plaint and in said map plaintiffs have shown four different parts by red colour. Plaintiffs have not specifically described suit property either in the plaint or in present application. Plaintiffs have mentioned four boundaries of the property of defendant no.1 in plaint para no.3 as well as they have mentioned four boundaries of property of defendant no.2 in plaint para no.4. Plaintiffs have shown various four parts in suit map by red colour, however they have, not mentioned any specifications about it as well as they have not mentioned four boundaries of

said areas in the plaint and this application, even boundaries mentioned in the suit map are also scratched and altered.

6. Plaintiffs have filed documents along with list exh.4. Plaintiffs have filed copies of alleged relinquish deeds executed by defendants no.1 and 2 dated 20.10.2011 and 26.09.2011. However it reveals that, said documents are not registered as required by Section 17 of Registration Act 1908, hence as per Sec.49 (c) it cannot be received in evidence. No other document have been filed by plaintiffs to prove their alleged ownership and possession over suit property. As per plaint and this application defendants no.1 and 2 are the owner and possessor of separate plots. In spite of it plaintiffs have shown various four areas in a suit map regarding which he is claiming injunction against both defendants. It is not the case of plaintiffs that, both the defendants are obstructing to the possession of plaintiffs over all four areas as shown in suit map, hence plaintiff is not entitled to claim injunction against both defendants regarding all four areas as shown in suit map. Plaintiffs have not specifically mentioned in the plaint and in this application specific area of suit property adjacent to defendant no.1 and 2 separately. For want of identification of suit property as well as failure of plaintiffs to prove their alleged ownership and possession over it as asserted in the application, plaintiffs are not entitled for the injunction as prayed for. Plaintiffs have failed to prove that, there is a prima facie case and balance of convenience in their favour. No

irreparable loss will be caused to plaintiffs if application will be rejected. Accordingly points no.1 to 3 are answered as negative.

As to point no. 4 :

7. Hence, following order is hereby passed.

**ORDER**

Application is rejected with cost.

Date – 08.02.2017

sd/-  
( A. B. Kurane )  
Jt. Civil Judge Jr.Dn., Ambajogai.