

Ahamadkha & others.

-V-

Sk. Razzak.

-ORDER BELOW EXH. 5-
(Passed on:- 05/06/2017)

The suit is filed for declaration and permanent injunction. The suit property as described in the plaint is Gut No. 20 its total area 3H-24R situated at village Jambhrun, Tq. Chikhli, District Buldana. The subject matter of the suit is total 3H-24R land as per averments in the plaint.

2. It is the case of the plaintiffs that, the plaintiff No. 2 is the mother and plaintiffs No. 3 & 4 are the brothers of plaintiff No.1. One Musakha Abbaskha Pathan was the father of the plaintiffs No. 1, 3 & 4. He has died in the year 2003. The defendant is the brother of plaintiff No. 2 Shahjanbee. He was resident of village Shelgaon-Kakde, Tq. Mehkar, District Buldana. The relations between late Musakha and the defendant were cordial. The defendant always asked the plaintiff No. 2 Shahjanbee and her husband Musakha to reside in village Bhorsa-Bhorsi permanently. For that purpose, the defendant had offered his agricultural land – suit property Gut No. 20 to the title and possession of Shahjanbee and Musakha. The defendant wanted to settle at village Billori, Tq. & District

Nanded. The defendant had promised to bear expenses of stamp duty and other expenses for registration of the sale deed.

3. For the sake of love and affection towards the defendant, late Musakha Pathan sold his agricultural land situated at village Shelgaon-Kakde to one Trimbak Tukaram Avahade for the consideration of Rs.15,000/-. The defendant is a witness to the said sale transaction. From the income of Rs. 15,000/-, late Musakha and plaintiff No. 1 Ahamadkha purchased the suit property from the defendant for consideration of Rs. 12,000/-. The said transaction of sale took place on 14/03/1980. Since the execution of the sale deed, the plaintiff No. 1 along with his father Musakha are in possession of the suit property. The plaintiff No.1 and his late father have cultivated the suit property. The names of the plaintiff No. 1 and his father came to be mutated in the revenue record of the suit property Gut No. 20. As the relations between late Musakha and the defendant were cordial, the sale transaction dated 14/03/1980 was not registered and for personal difficulties of the defendant. The defendant always promised the plaintiffs that he will register the deed dated 14/03/1980 with the proper authority. After the death of Musakha, the revenue officials have taken the entry of the names of the plaintiffs in the

record of the suit property.

4. Now the price of the suit property is at hike. The plaintiffs have learned from the reliable information that the defendant is going to sale out the suit property to the third persons for huge amount like Rs. 50,00,000/-. So the plaintiffs published the notice in the local newspaper and informed the public at large not to enter into any transaction in respect of the suit property. On 09/03/2016 the defendant came in the suit property to take forcible possession from the plaintiffs. The defendant threatened the plaintiffs to take possession of the suit property. The plaintiff No.1 lodged the report of the incident to Police Station, Amdapur. The suit property is the only source of livelihood of the plaintiffs. Hence, the plaintiffs are constrained to file the present suit for declaration and permanent injunction.

5. By the present application, the plaintiffs have prayed to grant temporary injunction against the defendant for restraining him or anybody on his behalf from disturbing possession of the plaintiffs over the suit property and its cultivation and from creating third party interest in the suit property.

6. The defendant has filed the reply at Exh. 26. He has denied the contentions and the prayer in the application. The defence of the defendant is that, in the year 1980 he has temporarily shifted to village Billori, Tq. & District Nanded, for the sake of livelihood. The defendant has cultivated the suit property by engaging the labourers. He occasionally comes to village Bhorsa-Bhorsi to visit the suit property. He has never handed-over possession of the suit property to the plaintiffs. The sale transaction in the year 1980 in fact never took place. The document of sale transaction filed by the plaintiffs is bogus and forged document. The defendant has raised the loans from the Government over the suit property. The plaintiffs have not objected the same. The defendant is true owner and possessor of the suit property. Alternatively, the defendant has submitted that the document of sale dated 14/03/1980 is un-registered document. So, it has no value in the eyes of law. The defendant prayed to reject the application.

7. I have heard Shir. T. A. Shaikh, the learned advocate for the plaintiffs and Shri. S. N. Yandait, the learned advocate for the defendant. The learned advocate for the plaintiffs has filed the written arguments at Exh. 37. The learned advocate for the defendant has filed the written arguments at Exh. 40. I have gone through the written arguments filed by

the learned advocates. The plaintiffs have filed some documents on record. I have gone through the documents.

8. During the pendency of the suit, the plaintiff No. 1 Ahamdkha Musakha Pathan has died on 11/08/2016. The plaintiff No. 1A to 1E are his legal representatives. They are wife, sons, daughter and son of the deceased plaintiff No. 1.

9. To avoid the repetition of the description of the documents, I am going to consider the said documents in the course of reasonings. Prima facie case, balance of convenience and irreparable loss are the main three ingredients for granting temporary injunction. It is to be seen now as to whether the plaintiffs fulfill triple test.

10. The plaintiffs have filed the copy of the sale deed dated 14/03/1980, certified copies of 7/12 extracts of Gut No. 20 for the period 1982 to 2010, xerox copies of revenue tax receipts paid by the plaintiff No.1, copy of the sale deed dated of the year 1979, the affidavits filed by the witnesses Afsarkha Pathan, Shafikha Pathan, Narayan Kamble, Aliyarkha Pathan, Sk. Nizam and Vitthal Ambhore, public notice in the newspaper,

certified copy of mutation No. 426, certified copy of 7/12 extract of Gut No.20 for the year 2015-16, the photographs of the suit property and the copy of the report dated 09/03/2016 lodged by the plaintiffs to Police Station Officer, Amdapur.

11. The dispute between the parties revolves around the document of sale transaction dated 14/03/1980. It is the specific case of the plaintiffs that, they have purchased the suit property from the defendant for consideration of Rs. 12,000/-. It is an admitted position that the said transaction of sale deed is not registered one. The said document is titled as 'खरेदीखत'. It is written on the stamp-paper of Rs. 10/-. A minute perusal of the sale deed shows that the defendant had given possession of the suit property Gut No. 20 earlier to 14/03/1980 by accepting Rs. 12,000/- from the plaintiff No.1 and late Musakha. Thereafter on 14/03/1980 the defendant has executed the present document. The defendant has repeated in the document that ahe has given possession of the suit property. The defendant seems to have agreed to do the expenses of registration of the said deed. From this important document, it appears that the plaintiff No.1 and his late father Musakha had been in possession of the suit property.

12. The question as to admissibility of the present document arises for determination. Such type of un-registered document can be looked into at this stage for collateral purpose. Means to see possession of a party over the immovable property. The plaintiffs have come with the case that, they are in possession of the suit property on the basis of the deed dated 14/03/1980. So the document dated 14/03/1980 can be given importance to see possession of the plaintiffs over the suit property. The pleading of the plaintiff and the document of sale transaction are in consonance with each other. The level of proof for deciding the present application and for adjudication of the suit on merits are different. So in my view the plaintiffs have shown prima facie case to file the present suit and the application Exh.5. Prim facie case means there should be triable issues in the dispute between the parties to the suit. In the present suit, the title of the plaintiffs to the suit property is one of the triable issues.

13. The 7/12 extracts of the suit property filed for the period 1981 to 2010 shows that the plaintiffs and late Musakha had cultivated the suit property for the said period. In the ownership column of 7/12 extract the name of the defendant appears through out the years. Relying on the entry in the ownership column, the defendant can not take stand that he is the

owner of the suit property. The reason behind is that on 14/03/1980 the defendant himself has transferred the suit property to the plaintiff No.1 and his father by sale. The 7/12 extract of the suit property for the year 2015-16 shows that it is in cultivating possession of the plaintiffs. So merely because the name of the defendant appears in the ownership column of 7/12 extract of the suit property, it can not be said that title vests in the defendant. Each case has to be decided as per the facts and circumstances of the case. The defendant has not filed any document to show his lawful possession over the suit property. The defendant has not disproved the documents filed by the plaintiffs.

14. The witnesses namely Afsarkha, Shafikha, Narayan Kamble, Aliyarkha, Sk. Nijam and Vitthal Ambhore have categorically stated on solemn affirmation that the defendant has sold the suit property to the plaintiff No. 1 and his father late Musakha and that the plaintiffs have been cultivating the suit property since 30 to 35 years. It may be noted that the witnesses are the cultivators of the land near by in the vicinity of the suit property. Moreover, the witnesses Afsarkha and Shafikha being the relatives of the plaintiffs were present at the time of sale transaction dated 14/03/1980. At this stage, the affidavit filed by the witnesses is to be

accepted and given importance to see factual possession of the plaintiffs over the suit property. From the documents filed by the plaintiffs, I am satisfied that they are in lawful possession of the suit property. So balance of convenience lies in their favour. The plaintiffs have shown their lawful possession over the suit property. Now it is to be seen as to whether their possession is obstructed by the defendant. To substantiate this contention, the plaintiffs have filed the copy of the report dated 09/03/2016 lodged by the deceased plaintiff No.1 Ahamdkha to Police Station, Amdapur. The postal receipt of the said notice is attached with the copy of the report. The contents of the report are relating to the subject matter of the present suit. By such documents, the plaintiffs have proved that the defendant has obstructed their possession over the suit property. Hence, possession of the plaintiffs needs to be protected by granting temporary injunction against the defendant.

15. The learned advocate for the plaintiffs has drawn my attention to the public notice issued by the plaintiffs in the local newspaper. The issue of 'Daily Punya-Nagari' dated 08/03/2016 is filed on record. The plaintiffs have given the said notice through their advocate Shri. T. A. Shaikh. The substance of the notice is that, the plaintiffs are in possession

of the suit property Gut No. 20 on the basis of the deed dated 14/03/1980 and that the public at large is informed not to do any transaction with the defendant Sk. Razzak in respect of Gut No. 20. From the above total factual position, it can be inferred that the defendant was going to alienate the suit property to the third persons. Hence, the prayer of the plaintiffs in the present application regarding protection of the suit property from its proposed alienation is just and proper. The plaintiffs have satisfied the triple test for granting temporary injunction. So, I proceed to pass the following order.

-ORDER-

- (1) The application is allowed.
- (2) The defendant himself or anybody on his behalf are temporarily restrained from disturbing possession of the plaintiffs over the suit property i.e. 03H-24R land and its cultivation by the plaintiffs, in any way, until the disposal of the suit.
- (3) The defendant is temporarily restrained from alienating the suit property or creating any third party interest in it, until the disposal of the suit.
- (4) Costs shall be caused in the suit.

Sd/-.
(P. S. Kulkarni)
Jt. Civil Judge Jr. Dn.
Chikhli.

Dt. 05/06/2017.

"I affirm that the contents of this PDF file Order
are same word for word as per original Order'.

Name of Steno :- Shri. M.S.Joshi,
Order uploaded on :- 21/06/2017.
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