

MHBU130020042019



Order below Exh. 5 in R.C.S. No. 123/2019.

Randhir & other

-V/s-

Ananda.

Present application has been filed by plaintiffs/applicants under Order XXXIX Rule 1 & 2 of the C.P.C.,1908 for the relief of temporary injunction against defendant/non applicant thereby restraining him from causing obstruction to the plaintiffs' peaceful possession and cultivation over suit property i.e. agricultural land admeasuring 2H.64R out of Gut No. 2 situated at Mauja Bhokar, Tq. Chikhli, Distt. Buldana till final disposal of the suit.

2) Perused application, say of defendant at Exh.13 and documents filed by both parties on record. Also heard learned Advocates appearing for plaintiffs and defendant.

3) Learned Advocate for plaintiffs has submitted that plaintiffs are the owners and possessors of suit property. Plaintiffs have purchased suit property from one Tukaram Gangaram Karhade vide registered sale deeds dated 29/1/2019. Prior to said sale deeds, registered Tabe Isar Paoti in respect of suit property was executed by Tukaram Gangaram Karhade in favour of plaintiffs and plaintiffs were put in possession of suit property. Suit property is also came to be recorded in revenue records in the names of plaintiffs.

Defendant is not concerned with the suit property.

4) This being so, on 15/9/2019, when plaintiff No.1 along with his mother had been to the suit property to spray insecticide upon the soyabin crop, at that time defendant came there and tried to disturb the peaceful possession and enjoyment of plaintiffs over the suit property on the basis of alleged revenue proceedings. The plaintiffs are not in a position to protect their possession and enjoyment from the unlawful activities of the defendant. As such, plaintiffs have constrained to file present suit along with this application.

5) Therefore, it is necessary to grant temporary injunction against defendant thereby restraining him from causing obstruction to the plaintiffs' peaceful possession and enjoyment over suit property till final disposal of suit. Plaintiffs have prima-facie case and balance of convenience also lies in favour of plaintiffs. Irreparable loss will be caused to plaintiffs if application is rejected as compared to defendant. Hence, prayed for grant of this application.

6) On the contrary, defendant has filed his say at Exh.13 wherein he denied all adverse allegations made by the plaintiffs against him. Learned Advocate for defendant has submitted that plaintiffs have filed present false suit along with instant false application for temporary injunction. It is further submitted that neither plaintiffs nor Tukaram Gangaram Karhade are in possession of suit property. In fact, Tukaram Gangaram Karhade was never having title and

possession over suit property. As such, Tukaram Gangaram Karhade is having no right to pass better title in suit property to the plaintiffs.

7) It is further submitted that as plaintiffs are not in possession of suit property so the question of causing disturbance to their possession over suit property by the defendant does not arise. In fact, suit property has been in possession of defendant since his forefather. Tukaram Gangaram Karhade was not the real owner of suit property and therefore, alleged sale deeds executed by him in respect of suit property in favour of plaintiffs are bogus and not binding upon the defendant.

8) As such, plaintiffs have no prima facie case and no balance of convenience lies in their favour. Even, no irreparable loss will cause to plaintiffs if application is rejected. On the contrary, defendant will suffer more hardship than plaintiffs if application is allowed. Hence, learned Advocate for defendant has prayed for rejection of this application with costs.

9) In view of above submissions, following points arise for my determination and I have recorded my findings thereon for the reasons discussed below.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether applicants is having prima-facie case ?	In the affirmative.

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|----|---|-------------------------|
| 2) | Whether balance of convenience lies in favour of applicants ? | In the affirmative. |
| 3) | Whether irreparable loss would be caused to applicants if the temporary injunction, as sought for, is not granted ? | In the affirmative. |
| 4) | What order ? | Application is allowed. |

REASONS

As to point Nos. 1 to 3 :-

10) It is pertinent to note here that plaintiffs have come with the case that they have purchased suit property from Tukaram Gangaram Karhade vide registered sale deeds and they are in possession of suit property. Defendant is trying to disturb their peaceful possession over suit property. On the contrary, defendant has denied the contention of plaintiffs that they have become owner and possessor of suit property on the basis of alleged sale deeds. Defendant contended that suit property has been in his possession since long.

11) It is pertinent to note here that both parties are claiming to be in possession of suit property. However, on perusal of documents filed by plaintiffs such as xerox copies of registered sale deeds, certified copy of 7/12 extract, certified copy of mutation and certified copy of village Form No.8-A, it prima-facie appears that plaintiffs are the owners

and possessors of suit property. On the contrary, defendant has filed no document on record from which it can be said that defendant has prima-facie shown his possession over the suit property.

12) Considering the facts and circumstances of the present case, I think that plaintiffs have made out prima-facie case. Plaintiffs have also shown that balance of convenience lies in their favour. Moreover, irreparable loss will be caused to plaintiffs if temporary injunction is not granted. Therefore, I think it just and proper to allow this application. Thus, I answer point Nos. 1 to 3 in the affirmative.

As to point No. 4 :-

13) Considering all these aspects, I am of the opinion that, the application deserves to be allowed. Therefore, I pass following order.

ORDER

- 1) Application is hereby allowed.
- 2) Defendant or his any relatives or his agents are hereby temporarily restrained from causing obstruction to plaintiffs' peaceful possession and enjoyment over the suit property till disposal of the suit.
- 3) Costs-in-cause.

Date :- 20/12/2019.
Place :- Chikhli

(S.W.Thombre)
Civil Judge Junior Division,
Chikhli.

Certificate

I B.B.Theng, Stenographer (L.G.) affirm that the contents of this PDF file Judgment/ Order are same words, as per original Judgment/Order.