



ORDER BELOW EXH. 5
IN R.C.S. NO. 11 / 2020
(Dt. 07.11.2020)

The present application made by plaintiff for restraining the defendant from creating obstruction or interference to the possession of plaintiff vide Order-39 Rule-1 of the Code of Civil Procedure. But defendant strongly opposed the application vide his reply / say at Exh. 21.

02. Brief facts of the case of plaintiff / applicant is as under :-

It is contention of applicant / plaintiff that he has purchased 2 R land out of gut No. 270 of village Bibi vide register sale-deed No. 2270/09 dated 30.12.2009 in accordance with said register sale-deed, mutation entry taken in his name. Grampanchayat issued Namuna No. 8 of property No. 1534 in his name. Property No. 1534 bounded as-

Towards east - Mehkar Road
Towards west - land of Parsaram Rathod
Towards north - remained land of original owner
Towards south - land of Bhiku Sutte.

(the above mentioned property here-in-after referred as suit property.)

03. According to plaintiff he has purchased suit property from Sharad Ramrao Kulkarni, Prakash Ramrao Kulkarni, Ashok Ramrao Kulkarni, Subhash Ramrao Kulkarni and Nalini Ramrao Kulkarni.

Since the date of register sale-deed he has possession over suit property. On dated 10.01.2020 plaintiff along with his labor went to the suit property. Defendant No. 1 came and told the plaintiff that suit property is belonged to him and he also obstructed the plaintiff. On 19.01.2020 plaintiff went to village Bibi, at that time defendants came to plaintiff and told the plaintiff that if he came to the suit property then they will assault the plaintiff. Defendants also threatened the plaintiff. According to plaintiff he is owner and possessor of suit property, he has paid all tax of the suit property in the office of Grampanchayat Bibi.

04. It is further contention of the plaintiff that he is presently residing in rent house and he willing to construct the house over suit property. But prior to start the construction defendants illegally obstructing him. Accordingly, plaintiff prayed for temporary injunction against defendant.

05. Defendant appeared and filed their say vide Exh. 21. It is contention of defendants that plaintiff has suppressed material fact. According to them the land situated in gut No. 270 of village Bibi was originally belonged to one Ramrao Gopalrao Kulkarni who sold the 80 R land out of gut No. 270 to defendants and other 19 persons vide register sale deed dated 15.04.1980 for consideration of Rs. 10,000/-. Then said 21 purchasers mutually partitioned concern 81 R land among themselves. Accordingly, defendants received 4 R land in accordance with mutation entry No. 1683. Thereafter, concern 4 R land also equally divided among defendant No. 2 and 3. The

Tahsildar Lonar converted said land into non-agricultural land vide order of Tahsildar Lonar dated 30.05.2019. Defendants have possession over suit property. Plaintiff has no concern with the suit property.

06. It is further contention of defendants that after the demise of Ramrao Gopalrao Kulkarni, his legal heir were resided at Akola. Out of them one Sharad Kulkarni was a registrar who along with other heirs made illegal sale-deeds and deceived so many people belonged to village Bibi. Plaintiff has no concern with suit property. Accordingly, defendants prayed to reject the application.

07. Heard the Learned counsel Shri. R. M. Dahalke for Plaintiff and Shri. S. S. Wankhede for defendant. Perused record and proceedings. I have also gone through the relevant provisions of the Code of Civil Procedure (CPC).

08. Ongoing through contentions and submissions of both sides, following points arise for my determination and I record its findings thereon, with reasons, as under-

Sr. No.	Points	Findings
01)	Does plaintiff prove that he made out prima-facie case ? In Negative
02)	Does plaintiff prove that balance of convenience lies in his favour ? In negative
03)	Does plaintiff prove that he would suffer irreparable loss, if temporary injunction is not granted as sought ? In negative

04) What order ?

..... The application
is rejected.

REASONS

AS TO POINT NO. 1 :-

09. So far as this point is concerned, it is required to be seen as to what is a prima-facie case. In establishing a prima-facie case, plaintiff need not establish his title. It would be sufficient for him to show that he has a fair question to raise as to existence of his right. While examining the question of prima-facie case the Court has to satisfy that the claim was not frivolously vexatious, in other words there is a serious question to be tried.

10. It is contention of applicant that he has purchased the suit property from Sharad Ramrao Kulkarni, Prakash Ramrao Kulkarni, Ashok Ramrao Kulkarni, Subhash Ramrao Kulkarni and Nalini Ramrao Kulkarni vide register sale-deed No. 2270/2009 dated 30.12.2009. Since, the date of sale-deed he is having possession over suit property. On the other hand respondent / defendants denied the contention of applicant and they also claim their ownership and possession over the suit property. According to them while common sale-deed dated 15.04.1980 defendant No. 1 along with other nineteen persons jointly purchased the land situated in gut No. 270 (old survey No. 47/3). Thereafter, out of said land defendants have received the suit property. Defendants have possession over suit property.

11. Plaintiff and defendants both have claim title and

possession over suit property. Both of them contended that they have purchased the suit property. Plaintiff has filed copy of register sale-deed vide Exh. 2. On perusal of same it appears that plaintiff has purchased 2 R land from Sharad Ramrao Kulkarni, Prakash Ramrao Kulkarni, Ashok Ramrao Kulkarni, Subhash Ramrao Kulkarni and Nalini Ramrao Kulkarni. He also filed copy of mutation entry, 7/12 extract and gaon namuna No. 8. It appears from 7/12 extract of gut No. 270 that several persons having lands in said gut number, it also appears that name of plaintiff and defendants stands in the 7/12 extract.

12. On the other hand defendants also filed copy of register sale-deed dated 15.04.1980, 7/12 extract of gut No. 270, copy of order passed by Tahsildar Lonar, gaon namuna No. 8(1), Tax receipt issued by Grampanchayat Bibi in the name of defendant No. 1, copy of partition-deed and mutation entry.

13. According to defendants since 1980 they are owner of suit property and have possession over the same. It is also contention of defendants that they have converted the suit property as to non-agricultural use, in accordance with order passed by Tahsildar Lonar. It also appears from copy of order passed by Tahsildar Lonar in Ra.Pra.Kra. N.A.P/ 42-D/61/2018-19 Bibi and Ra.Pra.Kra. N.A.P/ 42-D/62/2018-19 Bibi that land belonged to defendant No. 2 and 3 were converted into non-agricultural use. According to defendants said land is the same land which is mentioned in the suit. Defendants also filed map of suit property along with adjacent co-owners wide

Exh. 28.

14. Needless to say that both parties are claiming possession over suit property. Both parties filed documents of title in respect of their ownership. Name of plaintiff and defendants are also appeared in 7/12 extract. Copy of namuna No. 8 presented by both parties shows that there is some difference in the four boundaries of both namuna No. 8. However, according to defendants plaintiff has not possession over suit property.

15. According to plaintiff suit property numbered as property No. 1534 in Grampanchayat record. According to defendants their property numbered as property No. 1971 in the Grampanchayat record. However, both parties claim their possession and ownership over same property. It means in spite of there are two different numbered properties in accordance with Grampanchyat record but parties are claiming their right over same piece of land. The said fact and controversy can be decide after full trial and complete evidence on record, at this stage court can not determine the ownership of the parties.

16. Moreover, plaintiff and defendants also filed affidavits in support of their claim. Plaintiff has filed affidavits of Govind Pundlik Atole at Exh. 34. It came in his affidavit that plaintiff purchased suit property and plaintiff has possession over suit property. On the other hand defendants have filed affidavit of Parasaram Laxman Rathod at Exh. 30 and affidavit of Bansilal Dhondu Pawar at Exh. 31. It appears from Exh. 30 and 31 that defendants are owner of suit

property and they have possession over the same. If both parties filed Affidavit in their support, in such circumstances one of them may be false, therefore, at this stage it is heard to believe one side of affidavit as both parties claim possessions over same piece of land.

17. Defendant also filed photographs of suit property vide Exh. 28. It appears from same that there is a fencing to the plot and there is a board on which name of defendants mentioned as a owner. However, at this stage court can not totally rely on the photographs filed by defendants. But it is to be noted that plaintiff has not contention or nor filed any pleading in respect of fencing and the board fixed at suit property, which is appeared in photographs filed by defendants.

18. It is submitted by defendants that plaintiff resided at Malkapur Pangra. He is not presently resided at Bibi, learned counsel of defendants further submitted that plaintiff has mentioned in para No. 5 of the suit that he is presently residing in a rent house. He also submitted that plaintiff has not possession over suit property.

19. As discussed earlier, according to namuna No. 8 filed by both parties, there are different numbered properties belonged to plaintiff and defendants. But in fact it reveals from submissions of both parties that they are claiming title and possession of same property. There no any specific document filed on record by the plaintiff and defendants to show the exact property number of the suit property. Therefore, it is unable to held, what is exact property number of alleged property at this stage.

20. Considering all above fact it appears that plaintiff has suppressed material facts about fencing and board appeared from photographs. He has not made any submission in respect of map filed along with Exh. 28. Neither he filed any city-plan nor any cogent documents to show the correctness of property number for which he has made claim, because according to defendants the land or piece of land mentioned in the suit property is belonged to them and they have possession over suit property.

21. In view of above fact and discussion it appears that plaintiff has suppressed the material facts in respect of suit property. Therefore, plaintiff has failed to establish prima-facie case in his favour. Accordingly, I recorded negative finding on point No. 1.

AS TO POINT NO. 2 to 4 :-

22. '*Balance of convenience*' means the comparative mischief or inconvenience to the parties. In arriving at the balance of convenience, the Court has to weigh the mischief likely to be caused applicant, if the interim relief is refused. At the same time, it has also to compare the injury likely to be caused to the other side, if the interim relief is granted and '*Irreparable injury*' means such injury which cannot be adequately remedied by damages. The remedy by damages would be inadequate if the compensation ultimately payable to the applicants in case of success in the suit would not place them in the position in which they were before injunction was refused

23. As plaintiff is failed to prima-facie case, the balance of convenience shall not lies in favour of plaintiff. Moreover, it appears from pleading of plaintiff that he is presently resided at Malkapur Pangra, Tq. Sindkhed Raja. Suit property is situated at village Bibi, suit property is not a constructed house, it is a open plot. The ownership of alleged plot or piece of land is the crux of the matter. As plaintiff presently residing at Malkapur, accordingly, it is not ultimate necessity of the plot for residence. Therefore, plaintiff will not suffer irreparable loss. Moreover, if after the trial plaintiff has succeeded to proved his right over suit property, then plaintiff has alternative remedy accordance with Specific Relief Act. Considering all above fact and discussion, I recorded 'negative' findings on point No. 2 and 3 and for point No. 4, I pass following order.

ORDER

- 01) The application of temporary injunction is rejected.
- 02) Parties to bear their own costs.

Lonar.
Date : 07.11.2020

(S. B. Ambore)
C. J. J. D., Lonar

MHBU17-000153-2020

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RCS No. 11/2020

Ramesh Balkrushna Jadhav
Vs. Ukanda Ukaji Zipa Chavan

I affirm that the contents of this PDF file Order / Judgment are correct word to word as per the original.

Name of Court : Shri S. B. Ambhore,
Judicial Magistrate F.C.,Lonar.

Name of Steno : Shaikh Imran Abdul Rauf
Stenographer, Grade - 3, Lonar.

Date : 07.11.2020.