

ORDER BELOW EXH. 15

(Passed on 14 December, 2021)

The present application filed by the applicant Premanand Gowardhan for temporary injunction as per Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, against the non-applicant Chandrakala Ramteke for not to transfer, alienate or create third party interest and not disturb the peaceful possession of Gat No. 85/2 admeasuring area 1.62 H.R. agricultural land (Gat No. 85 admeasuring area 4.92 H.R agricultural land) situated at Maramjob, Tq. Deori, Dist. Gondia till the final disposal of the suit. (Hereinafter, it is called as 'suit property'.)

2. Brief avernments of the applicant as follows;

It is the contentions of the applicant that deceased Meerabai Jagannath Gowardhan was an original owner of the suit property. Deceased Meerabai was in possession of the suit property and cultivating the same. Deceased Meerabai died in the year of 2016. After death of deceased Meerabai the applicant as well as deceased Nanaji Gowardhan and deceased Devanand Gowardhan (brothers of the applicant) became an owner of the suit property by virtue of inheritance.

3. It is the further contentions of the applicant that on 19.04.1994 deceased Meerabai has not executed any sale deed in favour of the defendant No. 2 Dhanraj Tembhone and defendant No. 3 Keshavrao Tembhone in respect of the suit property. Sale deed dated 19.04.1994 is in respect of Gat No. 95, however, in said sale deed later on it was overwritten as Gat No. 85.

4. It is further contentions of the applicant that to grab the suit property defendant No. 2 Dhanraj and defendant No. 3 Keshavrao

executed a sale deed in favour of defendant No. 4 Shitladevi Agrawal and defendant No. 5 Vikas Panpaliya in respect of the suit property. Defendant No. 4 Shitladevi and defendant No. 5 Vikas executed a sale deed in favour of the non-applicant Chandrakala Ramteke (defendant No. 1). Sale deed executed by defendant No. 4 Shitladevi and defendant No. 5 Vikas in favour of the non-applicant Chandrakala is a null and void.

5. It is further contentions of the applicant that deceased Meerabai filed Regular Civil Suit No. 10/2012 before the Civil Judge Junior Division, Deori. Accordingly, said civil suit withdrawn by deceased Meerabai with liberty to file a fresh suit.

6. It is further contentions of the applicant that all the defendants illegally mutated their names in the revenue record, therefore, Sub-Divisional Officer, Deori set aside said mutation entries. Later on, against the order of Sub-Divisional Officer, Deori the non-applicant Chandrakala preferred an appeal before Additional Collector, Gondia, accordingly, said appeal was allowed. Later on, against the order of Additional Collector, Gondia the applicant preferred a revision application before the Divisional Commissioner, Nagpur, accordingly, said revision was rejected. Later on, against the order of Divisional Commissioner, Nagpur the applicant preferred an appeal before the Hon'ble Bombay High Court, Bench Nagpur.

7. It is further contentions of the applicant that he is an owner of the suit property by virtue of inheritance. The applicant and his brothers are in actual and physical possession of the suit property. The non-applicant is not an owner of the suit property. The non-applicant is trying to sale, transfer, alienate or creating third party

interest over the suit property. The non-applicant is also trying to disturb peaceful possession of the applicant over the suit property. The applicant would have suffer irreparable loss if the non-applicant sale, transfer, alienate or creating third party interest over the suit property. The applicant would have suffer irreparable loss if the non-applicant dispossess the applicant from the suit property. Therefore, the applicant filed the present application against the non-applicant for not to transfer, alienate or create third party interest and not to disturb the peaceful possession over the suit property till the final disposal of the suit.

8. The non-applicant appeared and filed her say to the present application at Exh. 21 dated 10.12.2020. The non-applicant denied all contentions of the applicant in the present application except legal proceedings in respect of the suit property. The non-applicant in special pleading averted that on 19.04.1994 deceased Meerabai (mother of the applicant) executed a sale deed in respect of the suit property in favour of defendant No. 2 Dhanraj and defendant No. 3 Keshavrao vide sale deed bearing No. 204/1994. Accordingly, defendant No. 2 Dhanraj and defendant No. 3 Keshavrao mutated their names in revenue record as well as they were in possession of the suit property till 2011. Later on, on 05.12.2011 defendant No. 2 Dhanraj and defendant No. 3 Keshavrao sold out the suit property in favour of defendant No. 4 Shitladevi and defendant No. 5 Vikas by way of registered sale deed bearing No. 342/2011. Later on, defendant No. 4 Shitladevi and defendant No. 5 Vikas sold out the suit property in favour of the non-applicant Chandrakala.

9. The non-applicant in special pleading further averted that

she is an owner and possessor of the suit property on the basis of sale deed executed by defendant No. 4 Shitladevi and defendant No. 5 Vikas. The non-applicant further contended that in said sale deed Gat No. 95 is wrongly mentioned instead of Gat No. 85, but boundaries and area is properly mentioned. The applicant have no interest or title over the suit property. The non-applicant further averted that the applicant filed the present suit as well as present application illegally against her. Hence, the non-applicant prayed for rejection of the present application with heavy costs.

10. In view of rival contentions of both the parties following points arises for my determination, to which I have recorded my findings thereon as under for the reasons given below.

Sr. No.	Points	Findings
1	Does the applicant proves the prima facie case in his favour?	No
2	Does the applicant proves balance of convenience lies in his favour?	No
3	Does the applicant proves he would sustain irreparable loss if temporary injunction is refused?	No
4	What order?	Application is rejected.

REASONS

11. Heard the learned advocate Mr. P. B. Ganboir for the applicant. Heard learned advocate Mr. M. S. Shahare for the non-applicant. The applicant as well as the non-applicant relied on some documents.

As to Point No. 1:-

12. Now coming towards legal position, the present application of temporary injunction filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, which is as follows

Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 :-**Rule -1 :- Cases in which temporary injunction may be granted :-**

Where in any suit it is proved by affidavit or otherwise -

(a) that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienating, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the court thinks fit, until the disposal of the suit or until further orders.

Rule -2 :- Injunction to restrain repetition or continuance of breach :-

(1) in any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the

commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing a breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) the court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the court thinks fit.

13. For temporary injunction applications filed under Order 39 Rule 1 and 2, said applications are also related to legal provisions of section 36 and 37 of the Specific Relief Act, 1963, which are as follows:

The Specific Relief Act, 1963 :-

Section 36 :- Preventive Relief How Granted :-

“Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual”.

Section 37 :- Temporary and Perpetual Injunctions :-

“(1) Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of the suit, and are regulated by the Code of Civil Procedure, 1908.

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit, the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.”

14. The court may grant temporary injunction to any party if he proved that property in dispute in a suit is in danger of being wasted, damage, alienation, sale, removal, dispossession and dispose or any other way. Before issuing a temporary injunction pending disposal of a suit, the applicant has to make out, firstly that he has got a prima facie title to properties. Secondly, the applicant must establish that he will suffer irreparable injury which is a matter which cannot be adequately compensated for by damages. Thirdly, the applicant must prove that the balance of convenience is in his favour, who is likely to suffer substantial mischief if the injunction is refused when compared to the mischief which might be caused to the non-applicant if the injunction is granted. Fourthly, the status quo must be maintained. The court has take into consideration all these points while granting a temporary injunction.

15. Now, considering this legal position the present application needs to be decided. The applicant filed the present suit for declaration and perpetual injunction. By deciding the present injunction application I am not deciding an ownership of the suit property. Now, coming towards the present application, the applicant averted that deceased Meerabai Jagannath Gowardhan was an original owner of the suit property. The applicant further averted that he is an owner of the suit property by virtue of inheritance. The applicant further averted that he and his brothers are in actual and physical possession of the suit property. For proving these contentions the applicant filed on record certified copy of Form No. 8-A of gat No. 85/1 at serial No. 1 along with list of document below Exh. 4. After perusal of said certified copy of Form No.8-A it prima facie appears that it is in the name of deceased Meerabai. The applicant also filed

on record certified copy of 7/12 extract of agricultural land of Gat No. 85/1 at serial No. 2 along with list of document below Exh. 4. After perusal of said certified copy of 7/12 extract it prima facie appears that it is in the name of deceased Meerabai. After perusal of said certified copy of 7/12 extract it prima facie also appears that it is of the year of 2018-2019. The applicant also filed on record certified copy of boundary certificate of Gat No. 85/1 at serial no.6 along with list of document below Exh. 4. After perusal of said certified copy of boundary certificate it prima facie appears that it is in the name deceased Meerabai. It is pertinent to note here that in the present suit Gat No. 85 and 85/2 situated at Maramjob, Tq. Deori, Dist. Gondia is a suit property. It is pertinent to note here that Gat No. 85/1 is not the suit property. Therefore, said certified copies of Form No. 8-A, 7/12 extract and boundary certificate are not the documents of the suit property. Therefore, it prima facie appears that there is nothing on record to show that the applicant is an owner and possessor of the suit property by virtue of inheritance.

16. On the contrary the non-applicant averred that on 19.04.1994 deceased Meerabai (mother of the applicant) executed a sale deed in respect of the suit property in favour of defendant No. 2 Dhanraj and defendant No. 3 Keshavrao vide sale deed bearing No. 204/1994. The non-applicant further averred that on 05.12.2011 defendant No. 2 Dhanraj and defendant No. 3 Keshavrao sold out the suit property in favour of defendant No. 4 Shitladevi and defendant No. 5 Vikas by way of registered sale deed bearing No. 342/2011. The non-applicant further averred that defendant No. 4 Shitladevi and defendant No. 5 Vikas sold out the suit property in her favour, therefore, she became an owner and possessor of the suit property.

The non-applicant further averred that in said sale deed Gat No. 95 is wrongly mentioned instead of Gat No. 85, but boundaries and area is properly mentioned. It is pertinent to note here that the applicant himself filed a xerox copy of sale deed bearing No. 204/1994 at serial No. 9 along with list of document below Exh. 4. After perusal of said xerox copy of sale deed it prima facie appears that said sale deed executed by deceased Meerabai Gowardhan in favour of defendant No. 2 Dharaj Tembhone and defendant No. 3 Keshavrao Tembhone in respect of Gat No. 95. It is pertinent to note here that in the present suit Gat No. 85 and 85/2 situated at Maramjob, Tq. Deori, Dist. Gondia is a suit property. It is pertinent to note here that Gat No. 95 is not the suit property. Therefore, said xerox copy of sale deed is not the documents of the suit property. Therefore, it prima facie appears that the non-applicant is not an owner of the suit property. It is pertinent to note here that if a Gat number was wrongly mentioned in the sale deed then the non-applicant has to get it corrected by the appropriate authority by following proper procedure.

17. The applicant himself also filed on record certified copy of Form No. 8-A of Gat No. 85/2 at serial No. 3 along with list of document below Exh. 4. After perusal of said certified copy of Form No. 8-A it prima facie appears that it is in the name of the non-applicant. The applicant also filed on record certified copy of 7/12 extract of agricultural land of Gat No. 85/2 at serial No. 4 along with list of document below Exh. 4. After perusal of said certified copy of 7/12 extract it prima facie appears that it is in the name of the non-applicant. After perusal of said certified copy of 7/12 extract it prima facie also appears that it is of the year of 2018-2019. The applicant also filed on record certified copy of boundary certificate of Gat No.

85/2 at serial No. 7 along with list of document below Exh. 4. After perusal of said certified copy of boundary certificate it prima facie appears that it is in the name of the non-applicant. It is pertinent to note here that entries in record of right shall be presumed to be true until contrary is proved. Therefore, after perusal of said certified copies of Form No. 8-A, 7/12 extract and boundary certificate it prima facie appears that the non-applicant is an owner and possessor of the suit property in the absence of any authentic document of an ownership.

18. It is pertinent to note here that as already discussed above it prima facie appears that there is nothing on record to show that the applicant is an owner and possessor of the suit property by virtue of inheritance. It is also pertinent to note here that as discussed above it also prima facie appears that the non-applicant is an owner and possessor of the suit property in the absence of any authentic document of an ownership. Therefore, as discussed above the applicant failed to prove prima facie case in his favour. Therefore, I recorded my findings as to point No. 1 in negative.

As to Point No. 2 and 3 :-

19. As to the findings given to point No. 1 it is crystal clear that the applicant failed to prove prima facie case in his favour. The applicant in the present application averred that the non-applicant is trying to sale, transfer or alienate the suit property to any third person. As discussed in point No. 1 it prima facie appears that there is nothing on record to show that the applicant is an owner and possessor of the suit property by virtue of inheritance. On the contrary as discussed in point No. 1 it prima facie appears that the non-

applicant is an owner and possessor of the suit property in the absence of any authentic document of an ownership. Therefore, it prima facie appears that the applicant does not have any right or interest in the suit property. It is pertinent to note here that as discussed above the applicant is not in possession of the suit property, therefore, no question arise to disturb his possession over the suit property by the hands of the non-applicant. Therefore, I hold that the applicant failed to prove balance of convenience in his favour and he would suffer irreparable loss if the injunction is refused. Therefore, I recorded my findings as to point No. 2 and 3 in a negative.

As to Point No. 4:-

20. Considering, all the legal principles required for granting the temporary injunction and as to findings given to point No. 1 to 3, I hold that the applicant is not entitled to the relief of temporary injunction. Therefore, I proceed to pass the following order.

ORDER

1. The present application Exh. 15 is hereby rejected.
2. Parties to be bear their own costs.

[Pronounced and dictated in the open court.]

Date:- 14-12-2021

Mohmad Wasim Akram
S/o Mohmad Jalal Sheaikh
Civil Judge Junior Division, Deori