

ORDER BELOW EXHIBIT 05 IN SPECIAL C.S.NO.56/2012.

1) Plaintiffs have filed this application under Order XXXIX Rule 1& 2 of Civil Procedure Code, seeking injunction on following grounds.

They have alleged that , Gat No. 279 situated at village Sewali, Taluka & District – Jalna is possessed by them, by way of agreement to sell dated 26-11-1992. In spite of that , defendant No. 1 and 2 have sold the suit property in favour of defendant No. 3 without possession. The alleged sale-deeds are sham, bogus and not binding upon them. The plaintiffs have paid consideration amount of Rs. 1,55,415/-. They have frequently requested to execute the sale-deed, however, by one or other pretext they failed to do so.

2) They have further alleged that , defendant No. 1 and 2 have moved an application before Deputy Superintendent of Land Record for measurement. Accordingly, their Officers came in the suit property for measurement on 4-7-2012 and found that , the defendant No. 1 and 2 were not in possession, therefore, measurement did not take place. Moreover, plaintiffs have moved an application to Tahasildar Jalna , to enter their name in crop inspection column. As per the directions of Tahasildar , the Revenue Circle Inspector came

on spot, prepared panchanama on 7-7-2012 and found that plaintiffs are in possession since 20 years and they have sowed Soyabean, Mug, Bajara, Toor etc. in 2012-2013. Therefore, the sale-deed between defendant No. 1, 2 and 3 are illegal, bogus and not binding upon them. Now, the defendants are trying to disturb their possession and alienating the suit property. Therefore, they have lastly prayed, the defendants be restrained from doing so.

3) The defendants have filed their Written Statement-cum say vide Exh. 24 and resisted the application in toto, saying that, the alleged agreement to sell is not legal. The defendant No.1 and 2 have sold the suit property in favour of defendant No. 3 by way of registered sale-deed, dated 18-6-2012 and handed over possession on the same day. Since the date of sale-deeds, the defendant No. 3 is in possession and plaintiffs have no right whatsoever. The defendant No. 3 has moved an application to Kamgar Talathi to enter their name as owner and possessor, wherein, the plaintiffs have objected the same. Therefore, his name is not entered in the revenue record. The panchanama made by T.I.L.R. and Revenue Circle Inspector are false. The plaintiffs have not filed suit for specific performance of contract, therefore, the suit is not tenable. The plaintiffs have also

not sought perpetual injunction in the plaint. Therefore, interim application is not tenable. There is no cause of action arose as alleged. Therefore, they have lastly prayed the application be rejected.

4) Heard argument. Perused record. Following points arise for my determination and I record my findings with reasons as follows:

<u>POINTS</u>	<u>FINDINGS</u>
1 Do plaintiffs prove prima-facie case?	Partly affirmative
2 Does balance of convenience tilts in favour of the plaintiffs?	Partly affirmative
3 Whether plaintiffs would suffer irreparable loss, if application is rejected?	Partly affirmative
4 What order?	As per final order.

REASONS

As to Points no. 1 to 3:

5) Ld. Advocate of plaintiffs has vehemently argued that, they are in possession over the suit property since agreement to sell dated 27-11-1992. I have gone through it minutely, it denotes para No. 2 that , “आज रोजी सदरील जमीन तुमच्या हक्कात व कब्जात दिलेली आहे.” Prima facie, it appears that , the suit

property was handed over to plaintiffs on the day of agreement of sell (27-11-1992) . Not only this, Ld. Advocate has further argued that the defendant No. 1 and 2 (Original owner) had moved an application to Taluka Inspector of Land Records for measurement . It's Officer came in Gat No. 279 , on 4-7-2012, and found that the defendant No. 1 and 2 are not in possession. The T.I.L.R. had made panchanama on 4-7-2012. I reproduce it for ready reference.

पंचनामा

दिनांक ४/७/२०१२

“आम्ही खालील सहया करणार पंच लोक कारणे पंचनामा लिहून देतोत की अर्जदार भगवान शिवाजी काळे, अजय सोनाजी काळे यांनी मौजे सेवली, ता. जालना येथील गट नंबर २७९ चे मोजणी कामी केलेल्या अर्जानुसार उपअधीक्षक भूमी अभिलेख जालना यांनी अर्जदार लगत कब्जेदार यांना लेखी नोटीसीने कळवून नेमलेल्या तारखेस मोजणीदार हे जायमोक्यावर हजर झाले. मोजणीदार यांनी स.नं. व ग. नं.ची पाहणी केली असता अर्जदार यांचा जायमोक्यावर ताबा आढळून न आल्यामुळे मोजणीकामी अडचण आल्यामुळे मोजणी काम करता आले नाही.

करिता पंचनामा जायमोक्यावर करण्यात आला

असुन तो सत्य व बरोबर आहे.”

स्वा / —
अर्जदार

स्वा / —
पंच

स्वा / —
तालुका निरीक्षक भूमी अभिलेख,
जालना.

It means, the defendants No. 1 and 2 were not in possession on 4-7-2012. It is pertinent to note that, both of them were present at the time of panchanama and signed thereon.

6) Not only this, plaintiffs had moved an application to Tahasildar, Jalna to record their name in crop inspection column . The Tahasildar, Jalna had directed to Rrevenue Circle Officer Sevali , who came on the spot and prepared panchanama. He had also found that , the plaintiff's are in possession over the suit property since 20 years. The panchanama prepared by Revenue Officer dated 7-7-2012 is hereby reproduced for ready reference.

पंचनामा

दिनांक ७ / ७ / २०१२

“आम्ही खालील सहया करणारे पंच लोक मौजे सेवली, ता. जालना आम्हास म.अ. विभाग सेवली व तलाठी सज्जा सेवली यांनी बोलावले वरून ग.नं.२७९ मध्ये हजर झाले. त्यांनी आम्हा पंचासमक्ष सदर गटाची पाहणी केली व समक्ष

नकाशा काढला समक्ष आम्ही शेतातील पंचानी पाहणी केली. सदर ग.नं. २७९ हि संपुर्ण जमीन अंदाजे २० वर्षांपासून गीरजाबाई श्रीरंग सदावर्ते यांचे ताब्यात आहे. तसेच या वर्षी २०१२-१३ या वर्षी गीरजाबाई यांनी जमीन पेरली असून सोयाबीन, मुग, बाजरी, तुर, उडीद पेरलेली आहे. करीता आम्ही पंचांनी पंचनामा लीहून दिला. पंचनामा वाचून सहया केल्या.”

पंचनामा

स्वा / —
पंच

स्वा / —
म.अ.

स्वा / —
तलाठी,
सजा सेवली.

7) The certified copies of panchanama of (T.I.L.R. and Revenue Officer) are placed on record along with List Exh. 9. Those above three documents are clearly shows that, the plaintiffs are in possession over the suit property since last 20 years. According to defendant No. 3 , he has purchased the suit property on 11-6-2012. No doubt, the copy of sale-deed is placed on record , but I am of view that , there is no document to show that the possession of the plaintiffs are withdrawn by defendant No. 1 and 2 and handed over to defendant No. 3 on the date of sale-deed. It is settled principle that

the person who is in possession has to be dispossessed by following due procedure of law. For that purpose, I would like to cite following case law.

Smt. Sarladevi widow of Kundanlal Bandawar, Dharampeth,

Nagpur, Appellant v. Shailesh s/o Gourishankar Namdeo,

Tilaknagar, Nagpur, Respondent reported in **A.I.R., 1996, Bombay,**

Page No. 98.

“(A) Civil P.C.(5 of 1908), O.39, R.1, R.2 – Injunction against interference with possession – Person in possession – Can claim it against everyone including rightful owner – Rightful owner cannot evict him by force – He has to follow due process of law.”

If defendants No. 1 and 2 want to sell out the suit property to defendant No. 3, they have remedy to get the possession vacated from plaintiffs by following due procedure of law and then execute the sale-deed to whomsoever. In the present suit, there is no single chit to show that , the defendant No. 1 and 2 had vacated the plaintiff's possession by following due procedure of law. Therefore, the plaintiff's possession is intact . Thus, they are entitled injunction against everyone including the rightful owner.

8) Ld. Advocate of defendants has argued that , whatever panchanamas were made by T.I.L.R. and Revenue Inspector are false, bogus . Alleged agreement to sell is not valid . No consideration amount was paid.

I am of view that , whatever allegations made by defendants are not tenable at interim stage. Those can be scrutinized at final stage. The Court cannot go into truth or validity of entries in the documents at interlocutory stage. Not only this, in depth scrutiny is not required while deciding Exh. 5. For that purpose, I would like to cite the citation in the case of **D. Apparao Vs. D. Rama Mohanrao** reported in **1996(2) Civil Court Cases, Page No. 22(A.P.)**

“Civil Procedure Code, 1908, O. 39.Rr.1,2- Documents filed in interlocutory proceedings- Court cannot go into truth or validity of entries in the documents filed in interlocutory proceedings- Contents of documents be considered as they are.”

In the case of **M/s. Great Eastern Energy Corporation Ltd. Vs. M/s. Jain Irrigation Systems Ltd. & Ors.** reported in **2010(3) All M.R.872,**

“(A) Civil P.C.(1908), O. 39, Rr.1,2; S.94 -Grant of interim injunction – Existence of 'prima-facie' case -

Implies existence of an arguable case – At the stage of interim application, Court is to examine material on record at horizontal level – In-depth scrutiny is not called for.”

The Hon'ble High Court have observed that, while considering the interlocutory applications, the Court should not go into truth or validity of the documents. Whatever documents filed should be considered as they are. Therefore, whatever allegations made by defendants that agreement to sell is false, panchanamas are not valid, consideration amount was not paid. Those are not relevant at this juncture. Whatever allegations made by defendants are to be scrutinized after leading evidence of respective parties.

9) Ld. Advocate of defendants has argued that, the plaintiffs have not asked perpetual injunction in plaint, therefore, interim application is not tenable.

10) I do not agree with him, because U/O. XXXIX Rule 1 and 2 Court has every right to grant interim injunction till final judgment. No doubt, the plaintiffs have not asked perpetual injunction in the plaint. The Court is not deciding the entire fate of the suit at interlocutory stage. Whatever lacunas are there, the

plaintiffs will face the consequences at final stage. So far, the interim application is concerned, the Court has every right to consider interim application without going merit and demerit of the suit at final stage. Therefore, the argument advanced by Ld. Advocate that, interim application is not tenable is not relevant at all.

11) Ld. Advocate of plaintiffs has argued that the defendants be restrained from alienating the suit property. I am of view that, plaintiffs need not worry about transfer *pendente lite* because Section 52 of the Transfer of Property Act will provide adequate protection. For that purpose, I would like to cite one case in **Kachhi Properties, Satara Vs. Ganpatrao Shankarrao Kadam and others** reported in **2010(5) M.L.J.,Page 903,**

“(a) Transfer of Property Act, S. 52 and Civil Procedure Code, O. 39, R. 1 – Transfers pendente lite – Section 52 of the Transfer of Property Act provides adequate protection to parties to lis – Occasions for invoking powers under Order 39, Rules 1 and 2 would arise only in rare cases where the plaintiff can demonstrate that rule of lis pendens is inadequate to protect plaintiff's interest.”

I am of view that, if defendant No. 3 alienate the suit property, it amounts to pendente lite and Section 52 shall provide

adequate protection. Therefore, it is not necessary to restrain the defendant No. 3 from doing so. Hence, prayer to that effect is discarded.

12) To grant injunction is equitable and discretionary relief. The plaintiffs have made out prima facie case. The balance of convenience tilts in their favour. If temporary injunction is rejected, they will be dispossessed from suit property. The said loss cannot be compensated in terms of money. As against, if the temporary injunction is allowed, the defendants will not sustain irreparable loss, because they are not in possession. Therefore, I answer Points No. 1 to 3 in the affirmative and proceed to pass the following order :-

ORDER

- i) Application is hereby partly allowed.
- ii) The defendants are hereby temporarily restrained from disturbing plaintiff's peaceful possession over the suit property till final judgment.
- iii) The rest of prayer of plaintiffs is hereby rejected.
- iv) Costs in cause.

Date:-18-12-2012

Sd/-
(C. S. Datir)
3rd Jt Civil Judge (S.D.)
Jalna.

C E R T I F I C A T E

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

Name of Steno:- R.N.Adkar,
Name of Court: 3rd Jt. CJSD, Jalna.
Date of Disposal : 18-12-2012

Date:-14-1-2013.

Sd/-
(R.N. Adkar)
Stenographer(L.G.),
3rd Jt. Civil Court(S.D.),
Jalna.