


MHJN040021622022 	R.C.S. No.233 of 2022 Sitabai Vs Anita
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ORDER BELOW EXH. 5 IN R.C.S. NO. 233 of 2022

(Passed on 19th September 2024)

1. Plaintiff has preferred this application under Order XXXIX Rule 1 & 2 for grant of temporary injunction to restrain the defendant from obstructing peaceful possession of plaintiff over the suit property.
2. The suit is filed for permanent injunction in respect of property being Gat No.228, total admeasuring Area 5 H. 38 R, out of which the land admeasuring 1 H. 60 R, four boundaries of which are as under:-
 - Towards East** - land of Ramesh Jaiswal and Laxman Parad
 - Towards West** - Nala
 - Towards South** - Land of Ashok Korde and Balu Korde
 - Towards North** - Land of Sharad Jaiswal(Hereinafter referred to as the “suit property”)
3. According to the plaintiff, suit property was purchased by her from original owners by way of registered sale deed on 04.05.2002 for consideration of Rs. 1,80,000/-. Thereafter, Mutation Entry No.443 was effected. Accordingly, the plaintiff became lawful owner and possessor of the suit property and she is cultivating the same since long. The plaintiff has three sons, out of which a son namely Radhakisan died in 2020. However, the defendant No.1, being daughter-in-law of the plaintiff, is obstructing peaceful possession of the plaintiff by repeated demands of partition. Similarly, on 25.09.2022, the defendant obstructed the plaintiff while she

was working in her field. It is stated that the defendant is also threatening the plaintiff that she will falsely implicate the plaintiff in court cases. It is prayed that if defendant is not restrained, the plaintiff will not be able to cultivate the suit property. Hence, present application.

4. Defendant filed her say at Exh.14 and stated that suit property is ancestral property of plaintiff and defendant. As same was purchased from the consideration amount received by selling portion of Survey No.249/1A at Village Kordewadi, Taluka Kej, District Beed. It is also stated that Survey No. 249/1A property was sold on 24.09.1991 for Rs.1,00,000/- by registered sale deed No.2694/1991 and suit property was purchased from the said consideration amount of Rs.1,00,000/-. Therefore, defendant has equal right over the suit property after demise of her husband – Radhakisan. The defendant denied sole ownership of the plaintiff over the suit property. She stated that she has filed suit for partition in this court being R.C.S. No.36/2023. Therefore, the plaintiff can not claim any kind of injunction against her. Accordingly, defendant prayed for rejection of the application.

5. Perused application and documents. Heard Both sides. Following points arose for determination and I have recorded findings alongwith the reasons for them as under: -

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiff has prima facie case?	Affirmative
2.	Whether balance of convenience lies in favour of the plaintiff ?	Affirmative
3.	Whether the plaintiff will suffer irreparable loss, if temporary injunction is not granted in his favour?	Affirmative
4.	What order?	Application is rejected

REASONS

As to point No. 1 to 3 –

6. In support of her contentions, the plaintiff has filed on record original registered sale deed dated 04.05.2002 and mutation entry No.443 which shows that said property was purchased from original owners Ambadas Rokde and Shrirang Padulkar for Rs.1,80,000/-. She also relied upon 7x12 extract of Gat No.228 alongwith cultivation table. Perusal of both documents show that Mutation Entry No.443 was passed on the basis of registered sale deed dated 04.05.2002.

7. So far as defendant's contention in respect of ancestral nature of suit property is concerned, it has to be proved in trial. So far as lawful possession is concerned, the plaintiff has filed on record title document. Similarly, sale deed is also never challenged by the defendant till today. Hence, it is clear that the Plaintiff has made out prima facie case to invoke powers under order XXXIX Rule 1 & 2 of Civil Procedure Code.

8. Similarly, filing of subsequent suit by the defendant shows that there is substance in the contentions of the plaintiff that defendant threatened to implicate them in the court cases. In such circumstances, if the defendant is not restrained from causing obstruction, there will be irreparable loss to the plaintiff. Since, plaintiff has made prima-facie case, the balance of convenience would lie in favour of the plaintiff. Hence, Point No.1 to 3 are answered in affirmative and to answer point No.4, following order is passed -

-ORDER-

- i) Application is allowed.
- ii) Defendant, her agents or any person claiming on her behalf, are restrained from causing obstruction to the peaceful possession of the plaintiff over the suit property, till the final decision of the suit.
- iii) Parties to bear their own cost.

Date: 19.09.2024

Jt. Civil Judge Jr. Division,
Ambad.

CERTIFICATE

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

Name of Steno :- S. M. Sapkal

Name of Court :- Jt.Civil Judge Junior Division,
Ambad.

Sd/-
Steno