

Mahebubkha Pathan Vs. Sachin Chavan & Others

MHJN050011262020



Order below Exh. 05 in RCS No.70/2020

This is temporary injunction application of the plaintiff .

Plaintiffs' case in a nutshell-

2. Plaintiff has given the description of the suit property as follows-

The description of suit property is as below:

Property	Area Sq.M.	Boundaries
Mauje Watur Tq.Partur Dist. Jalna Milkat No. 1627	It's length South-North 100Ft. and breadth East-West 09Ft.	East -Datta Shankar's Property. West - Sachin Ramrao's Property. South - Government road North - Jalna to Mantha road

(For the sake of brevity hereinafter above mentioned property will be called as the suit property.)

Plaintiffs' case in a nutshell :-

3. Plaintiff Mahboob Abbaskhan Pathan has purchased the suit property from the Bhagwan Vitthal Waghmare on the date 29/09/2018 by way of Registered Sale Deed No. 3308/2018 for an amount of Rs. 1,30,000/-. Accordingly, plaintiff's name is mutated by way of ME No. 1627 on the date 28/11/2018. Plaintiff is the owner and the possessor of the suit property bearing no.1627 admeasuring area of length South West 100 Foot and width East West 09 Foot. Defendants are not anyway concern to the plaintiff's property. Defendant no. 01 Sachin is towards the Western side of

the suit property of the plaintiff and he is claiming over it by way of bogus sale deed executed from the defendant no. 02 Hariram Ambadas Mane and defendant no. 03 Badrinarayan Khavane. On the date 13/03/2020, defendants tried to encroach upon the suit property of the plaintiff and hence, the plaintiff is constrained to make the present temporary injunction application.

Defendants' case in a nutshell-

4. Suit is proceeded Ex Party against defendant no. 02 Hariram Ambadas Mane and 03 Badrinarayan Ganpatrao Khavane by an order dated 15/03/2021, below Exh 01. Defendant no. 01 has appeared and filed his written statement vide Exh 33. He has specifically denied all the allegations of the plaintiff and submitted that plaintiff is not in the possession of the suit property. In fact, there is no area remaining to sell by way of sale deed dated 29/09/2018 bearing Registered Sale Deed No. 3308/2018. Defendant no.01 has prayed for the rejection of the temporary injunction application of the plaintiff.

Arguments

5. Heard at length, Ld. Adv. Shri. R.L.Paikrao for the plaintiff and Ld. Adv. Shri. J.P.Bagal and Shri P.D.Chavan for the defendant no. 01.

6. After considering the rival contentions of the plaintiffs, following points arise to my consideration and I have given my findings with reasons thereon as follows.

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the plaintiff proves that, he is having a prima facie case in his favour ?	In the negative

2	Whether the balance of convenience lies in favour of the plaintiff ?	In the negative
3	Whether the plaintiff will suffer the irreparable loss if injunction is not granted in his favour ?	In the negative
4	What order and cost ?	As per final order.

REASONS

7. Perused following documents submitted by the plaintiff :-

Sr. No	Description of document	Exhibit no.
1	Certified copy of Sale deed no. 3308/2018 on the date 29/09/2018	Along with List 04/01
2	Certified copy of Revenue register in the name of Mehboobkha Abbaskha of the year 2020-2021	07
3	Certified copy of Sale deed no. 2752/2000 on the date 01/08/2000	Along with List 04/02
4	Certified copy of Milkat No. 936 Issued by Gramsevak of Watur Tq. Partur Dist. Jalna	Along with List 04/03
5	Photostat copy of Sale deed no. 800/2013 on the date 19/03/2016	Along with List 04/04
6	Photostat copy of complaint to PI of P.S. Partur dated 13-03-2020	Along with List 04/05
7	Certified copy of 7x12 extract block no. 145	08
8	Kachha Nakasha of Milkat no. 1627	Along with List 04/06
9	Photostat copy of Sale deed bearing no. 2447 on the date 03/07/1998	Along with List 28/01
10	Photostat copy of Sale deed bearing no. 2446 on the date 03/07/1998	Along with List 28/02
11	Photostat copy of complaint to PI of P.S. Partur dated 28-12-2021 and copy to S.P. Jalna & Dy.S.P.Partur	Along with List 40/01

12	Explanation letter of Watur Gramvikas officer about House no. 936/1	Along with List 44/01
13	Certified copy of 7x12 extract block no. 145	50
14	Certified Copy of 7x12 extract of Survey No. 78 in the name of Subhash Mishrilal.	51

8. Perused following documents submitted by the Defendants :-

Sr. No	Description of document	Exhibit no.
1	Certified copy of Exh. 01 of RCS 74/2013 between Bhagwan Vs. Sachin in the Partur Court	Along with exh. no. 42/ 01
2	Certified copy of Sale deed bearing No. 3101/1996	Along with exh. no. 42/ 02
3	Certified copy of Sale deed bearing No. 264/1997	Along with exh. no. 42/ 03
4	Certified copy of Sale deed bearing No. 1702/1997	Along with exh. no. 42/ 04
5	Certified copy of Sale deed bearing No. 2461/1997	Along with exh. no. 42/ 05
6	Certified copy of Sale deed bearing No. 2625/1997	Along with exh. no. 42/ 06
7	Certified copy of Sale deed bearing No. 2661/1997	Along with exh. no. 42/ 07
8	Certified copy of Sale deed bearing No. 2447/1998	Along with exh. no. 42/ 08
9	Certified copy of Sale deed bearing No. 2448/1998	Along with exh. no. 42/ 09
10	Certified copy of revenue register of the Milkat No. 971 in the name of Sachin Chavan of the year 2022-2023	Along with exh. no. 47/01

As to point nos. 1 to 3

9. Points no. 1 to 3 are interlinked. Hence, I am recording my findings on all this points together.

10. Plaintiff has come up with the avernments that he is the owner

and possessor of the suit property and he has purchased the suit property from Bhagwan Vitthal Waghmare. To substantiate this averment, plaintiff has adduced on record-

I. Original Sale deed bearing PRN No. 3308/2018 vide list at Exh 4/1,

II. Form no. 9 of Suit Property that is the Tax Assessment List of Grampanchayat No. 1627 in the name of Mahboob Khan Abbaskhan Pathan vide Exh 7,

On the basis of these documents defendant is claiming to be the owner and possessor of the suit property. Plaintiff is relying upon the photostat copy of the complaint given by the Bhagwan Waghmare to the PI Partur against the Sachin Ramrao Chavan of the date 13/03/2020.

11. For deciding the present temporary injunction application, plaintiff has to prove, only his settled possession over the suit property. Defendant no. 01 Sachin Ramrao Chavan through his written statement vide Exh 33 averred that plaintiff is not in the possession of the suit property as no area is left to sale by way of PRN No. 3308/2018. To substantiate the same, Ld. Adv. Shri. P.D.Chavan of the defendant no. 1, produced on record catena of Certified copies of Sale Deed at List 42/01 to 09. All these sale deeds are in respect of area in block no.145. Plaintiff's sale deed is also in respect of Grampanchayat Milkat No. 1627 which is in block no. 145. Ld. Adv. Shri. P.D.Chavan has drawn the attention of the court, on the areas involved in this sale deeds. The sellers in respect of this block no. 145 have never minused their area which they have sold by way of previous sale deed and at the time of executing the sale deed 3308/2018, no area is left with the seller Bhagwan Waghmare. Catena of this sale deed reflects the same. **To overcome this lacuna**, plaintiff at later stage given **affidavit of one of the seller Shankar Tapaji Pawar vide Exh 45** who deposes that by way of Sale deed bearing PRN No. 2661/1197

which is at list Exh 42/7, he has never become the owner and possessor of **60R Area**. This clearly shows that Oral Evidence to counter the written sale deed is made and the same is not permissible under **section 91 of the Indian Evidence Act, 1882**. In fact plaintiff has not disclosed this facts in the plaint. **Hence, I come to conclusion that Plaintiff has not come in the court with clean hands.**

12. Ld. Adv. Shri. J.P.Bagal of the defendant no. 01 has drawn the attention of the court on the photocopy of the complaint dated 13/03/2020, which has been given by the Bhagwan Waghmare against the Sachin Chavan in respect of alleged encroachment over the suit property. He first stressed on the point if the Plaintiff Mehboob Khan is the owner of the suit property, then why Bhagwan Waghmare has given the complaint to the police against the defendant no. 01. So, he made submission that plaintiff is not in the possession of the suit property. Further he draws the attention on the court on the following lines in that complaint-

“सदरील जागेचा ताबा देण्याकरीता त्या जागेवर गेलो असता, सचिन रामराव चव्हाण यांनी त्या जागेवर आलमारी ठेवून अतिक्रमण केल्याचे आढळून आले आहे”

So, based on the above mentioned line and the specific pleading of the plaintiff in the same manner in the plaint, showing the date of complaint that is 13/03/2020 as the cause of action for the suit, Ld. Adv. Shri. J.P.Bagal of the defendant no. 01 vehemently argued that plaintiff was never in the possession of the suit property. In fact the date of Sale Deed bearing PRN No. 3308/2018 in respect of plaintiff's suit property is 29/09/2018 and sale deed itself mentions that Mahboob Khan is put into the possession of the suit property then why again there is a need to put him in possession, on the date 13/03/2020. Ld. Adv. Shri. Paikrao of the plaintiff, replied to it that plaintiff has purchased the suit property from Bhagwan who promised that in case of any problem relating to suit

property sold, he will help the plaintiff and hence the complaint dated 13/03/2020 is given by the Bhagwan Waghmare against the defendant no.01 in respect of the suit property.

13. I have read the contents of the sale deed. The date of Sale Deed of the Plaintiff's Suit Property is 29/09/2018. So far as the possession of the suit property is concerned it mentions following-

“वरील वर्णनाची मिळकत मी तूम्हास रक्कम रुपये १,३०,०००/रुपयांमध्ये मालकी व ताब्याच्या हक्कासह विक्री करून मालकी आधारे मिळकत तदंगभूत वस्तूंसहीत कायमची तूमच्या ताब्यात दिली आहे”.

So, on the perusal of the above mentioned lines and considering the date of the sale deed, it has to be presumed that seller Bhagwan Waghmare has given the possession of the suit property to the plaintiff on the date of sale deed. Then why Bhagwan Waghmare went on the suit property on the 13/03/2020 to give the possession of the suit property as per the complaint to Police. In fact, plaintiff has not adduced on record, the possession receipt in respect of the suit property. Hence, the cause of action of the plaintiff that is the complaint of the date 13/03/2020 itself raises the doubt about the plaintiff's possession over the suit property. Contents in the sale deed and the anomaly created by complaint dated 13/03/2020 which is made as a cause of action for instituting the suit, creates doubt about the plaintiff's possession over the suit property. On the date 05/05/2022, Ld. Counsel of the Plaintiff, Shri. R.L.Paikrao, adduced on record following documents -

Certified copy of 7x12 extract block no. 145

Exh 50

Certified Copy of 7x12 extract of Survey No. 78

Exh 51

in the name of Subhash Mishrilal.

Letter sent by Tahsildar Partur to Datta Shankar Pawar and Bhagwan Vitthal Waghmare. Vide List at Exh 49/3.

Ld. Adv. Shri. Paikrao pointed that Datta Pawar and Bhagwan

Pawar are shown as Possessors of 200 Sq.Meter area in block no. 145. From them only, plaintiff has purchased the suit property. I want to point out that whether the previous owner of the suit property are in the possession of the suit property, is not the fact in issue. Whether the plaintiff is in possession of the suit property or not is the fact in issue. The date of possession of the plaintiff mentioned in his sale deed, the date of delivering his possession shown in the NC dated 13/03/2020 etc are totally contradicting. At this stage, on the basis of Plaintiff's oral and documentary evidence, I am not coming to conclusion that plaintiff is in possession of the suit property. **Hence, I hold that at this stage plaintiff has failed to prove his settled possession over the suit property.**

14. Ld. Adv. Shri. R. L. Paikrao of the plaintiff adduced on record various documents to show that defendant no. 01 is not the owner of the his area and his sale deed executed by Defendant no. 02 and 03 in his favour is bogus one. So, Ld. Adv. Shri. Paikrao is submitting that he is not in lawful possession of the suit property. However, it is to be noted that plaintiff has shown defendant no. 01 towards western side of his suit property. So, it is presumed that defendant no. 01 is in possession of that area. Needless to mention, plaintiff has to prove **his settled possession over the suit property**. How the defendant no. 01 is in possession of his property, is not the fact in issue in the present suit. Plaintiff has to prove his settled possession over the suit property, which it fails to prove on the basis of above mentioned discussion.

15. Sale Deed of the plaintiff vide List Exh 4/1 itself contrary on the point of settled possession of the plaintiff if we compare it with the cause of action column of the plaint which is based on the complaint given by the Bhagwan Waghmare to police station, Partur. Form No. 8 Vide Exh 7

of the suit property which is in favour of the plaintiff is just an assessment list for payment of tax on the property. It is purely for fiscal purpose. It cannot be relied as the document to prove the title or the possession when contrary evidence is produced on record. Hence, based on all the above mentioned discussion, on the basis of adduced ocular and documentary evidence on record, I hold that as the plaintiff has failed to show his settled possession over the suit property, **he is not having “Prima Facie Case”.**Hence, **“Balance of Convenience” does not lie in his favour.** And, as the plaintiff is not in settled possession of the suit property, **no “Irreparable Loss” will cause to him, if Temporary Injunction is not granted in plaintiff's favour.** Hence, **“I answer to point no. 01 to 03 in the negative.”**

As to point no. 4

16. Plaintiff has failed to prove his settled possession over the suit property, at this stage. On the basis of observations to point nos. 1 to 3, plaintiff's temporary injunction application is rejected. Considering the nature of this application, I consider that parties shall bear their own cost. Hence, In order to answer point no. 4., I proceed to pass the following order-

Order

- 1] Temporary injunction application is rejected.
- 2] Parties shall bear their own cost.

Date: 09/05/2022
Place: Partur

(**Smt. Pooja N. Kokate**)
Civil Judge (J.D.)
JO Code 2489

Certificate

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

Name of the Stenographer	
Name of the Court	Smt. P.N. Kokate, C.J.J.D., Court No.1 Partur.
Date of dictation	09/05/2022
Order Signed by P.O. on	09/05/2022
Order Uploaded on	09/05/2022