

ORDER BELOW EXT.5 IN RCS NO.47 OF 2016

1. This application is filed by the plaintiff under Order 39 Rule 1 and 2 of Civil Procedure Code, 1908 ('Code' for short) to restrain the defendants from interfering with his possession over the land viz. 3H 07R portion of land in Gat no.223, situated at Mouje Bondhlapuri, Tal.Ghansawangi, Dist.Jalna (for short 'suit property') till final disposal of the suit. The defendants have combated the application by filing their detailed reply at Ext.15.

2. Factual matrix of present application is as under:-

That the plaintiff has acquired ownership and possession in respect of suit property by virtue of registered sale deed dated 24.05.2007, executed by Tularam Kesaji Unde i.e. erstwhile owner of suit land in favor of plaintiff for a consideration of Rs.6,00,000/-. The defendants do not have any connection with the suit property.

3. According to plaintiff, the defendant no.1 had earlier filed a suit no.134/2009 for seeking perpetual injunction apropos suit property. However, the said suit came to be dismissed. Feeling aggrieved, the plaintiff had preferred an appeal bearing No.152/2012, however, the same has also met with rejection. Besides, he had also made some unsuccessful efforts before the revenue authorities to get his name entered into the suit land, but in futile. Despite, defendants did not stop interference with the ownership of plaintiff. On 18.06.2016, the plaintiff requested the defendants to stop such interference, which, however was turned

down. This constrained the plaintiff to file instant suit. However, the suit will take some time to reach to its logical end. Therefore, he has filed instant application to enjoin the defendants from causing further obstruction to the plaintiffs' peaceful enjoyment of suit land.

4. According to plaintiff, he has prima-facie case, balance of convenience also tilts in his favor and that an irreparable loss would be caused if injunction is refused. Hence, he has prayed that the application may be allowed.

5. According to defendants, the application is false, frivolous and concocted one. They have categorically denied ownership and possession of plaintiff over the suit land. It is their case that Gat No.223, total ad-measuring 17H 64R situated at village Bodhanapuri, Tal.Ghansawangi, Dist.Jalna is their ancestral family property, which was recorded in the name of defendant no.1 being Karta of Hindu Joint Family. Thereby, defendants were co-owners in respect of suit property and that Tukaram Unde i.e. grandfather of plaintiff was not the sole owner of it.

6. It is further contended that, in the year 2001, Tukaram Unde had effected oral partition of 3H 53R portion of Gat no.223, wherein eastern side portion was given in the possession of defendant no.1, whereas Sheshrao Unde was put into possession of western side half area of land. Moreover, the fact of partition was reduced into writing in the presence of

witnesses. Since then, they have been in enjoyment of it by virtue of ownership. Despite said position, Tukaram Unde, with the instigation of Sheshrao Unde has fraudulently effected subject deed in favor of plaintiff. However, the said deed does not extend any right in favor of plaintiff as the same was effected without consideration. It is further stated that they have planted 400 pomegranate trees, five mango trees, 25 teak_and 25 eucalyptus trees etc. in it. Under such circumstances, injunction, if granted, would cause irreparable loss to the defendants than the plaintiff. On and among these grounds, it is prayed that the application may be rejected with costs.

7. Heard Shri. R. R. Kulkarni, Ld. Advocate for the plaintiff and Shri. S. S. Kulkarni, Ld. Advocate for the defendants. Perused documents filed on behalf of both the sides. Following points arise for determination to which I have recorded my findings with reasons to follow:-

POINTS	FINDINGS
1. Whether plaintiff proves prima-facie case in his favor?	... In the Affirmative
2. Whether balance of convenience tilts in favor of plaintiff?	... In the Affirmative
3. Whether irreparable loss would caused to the plaintiff if injunction is refused?	... In the Affirmative
4. What order?	...As per final order

REASONS

8. In order to mainstay application, the plaintiff has filed

7/12 extract of suit land, copy of M.E.No.1168, copy of judgment and order dated 31.03.2012 passed in RCS No.134 of 2009, copy of judgment and order dt. 30.10.2015 passed in Appeal No.152 of 2012 and order dated 23.12.2009 passed by the Sub-divisional officer, Partur, Dist. Jalna in ROR Appeal No.140 of 2009.

9. Per contra, defendants have filed copy of evidence of one Bapurao Ganpatrao Unde and Tularam Kesaji Undein RCS no.134 of 2009, receipt issued by Shivshakti Bio Planttec Ltd., Copy of 7B extract, affidavits of Shaikh Chand Shaikh Hussain, Tulsidas Vithoba Dhanure and certified copy of sale deed dated 24.05.2007

AS TO POINT NOS.1 TO 4

10. For the sake of brevity, I am clubbing all the points together for discussion.

11. Ld. Advocate for the plaintiff vehemently argued that his client is in ownership and possession of suit land by virtue of a registered deed of sale dated 24.05.2007. Though, defendants have earlier tried to challenge title of plaintiff, their claim have been rejected by each and every authority. Despite, they did not stop their act of interference with the possession of plaintiff. If, according to him, defendants are not prevented from continuing their illegal acts, the same would result in great damage to his client which would not be compensated in terms of money. At the outset, he urged to grant relief of temporary injunction in his favor.

12. Per contra, Ld. advocate for the defendants strenuously argued that the revenue records, admissions extracted from the mouth of witnesses during the evidence of RCS No.134 of 2009 clearly goes to show that the defendant no.1 is in possession of suit land. He further submits that the particular admission about his possession has not been considered by the trial as well as Hon'ble Appellate Court. Therefore, he has filed another suit in this Court, which is pending. Moreover, plaintiff has failed to establish his prima-facie ownership in respect of suit land. Hence, he submits that the application may be rejected with costs.

13. Before proceeding further, it is essential to note down some settled position apropos relief of temporary injunction. In the case of **Seema Arshad Zaheer & Ors. Vs, Municipal Corporation of Greater Mumbai & Ors. – (2006) 5 Scale 263**, the Hon'ble Apex Court has indicated the salient features of prima-facie case as under: *"The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima-facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary*

injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands." With this settled position, let us turn to the case at hand.

14. The plaintiff has approached this Court for seeking perpetual injunction inter alia restraining the defendants from causing hindrance to his peaceful enjoyment of suit land. Per contra, defendants have come out with the case that out of suit land, half portion of land has been in possession of defendant no.1, since oral partition dated 25.06.2001 purportedly effected by Tularam Unde. They have further contended that the witnesses, copy of which has been filed in support thereof, in RCS No.134/2009, have clearly admitted his possession over the suit land. Therefore, according to defendants, the sale deed executed in favor of plaintiff is illegal.

15. It seems to be an admitted position that the defendants herein had earlier filed a suit no.134/2009 to restrain the plaintiff from causing obstruction to their peaceful enjoyment of subject land. From perusal of copies of orders and judgments filed by the plaintiff, it appears that the said suit had been rejected by the trial court. Moreover, feeling dissatisfied with the dismissal, the defendants had preferred an appeal no.152/2012, however, the same has also met with rejection. Having such unhealthy background, the defendants are trying to challenge the possession of plaintiff over the suit land.

16. Ld. Advocate for the defendants has accentuated to the evidence of Tularam Unde I.e erstwhile owner of suit land, particularly some marked portion of his cross-examination in RCS No.134 of 2009 and submits that in the said suit, said witness has candidly admitted fact of partition amongst the parties as also possession of defendant no.1 over the suit land. Besides, he took me to the evidence of Bapurao Ganpatrao Unde, witness of defendants in said suit, who purportedly admitted execution of partition deed amongst the parties. According to him, the said position fortifies fact of partition between the parties in respect of suit land. At the outset, he seems to have placed reliance on these documents/evidence to buttress his prima-facie possession over the disputed land. However, the same cannot be looked into for any purpose for various reasons.

17. The first and foremost reason is that the suit no.134 of 2009, filed by the defendants, has already been decided by a competent civil court on merits. Moreover, feeling dissatisfied with the dismissal of said suit, the defendants had preferred an appeal no.152/2012 before the Hon'ble Appellate Court, Dist. Jalna. However, they did not get any desired relief even before the appellate forum. It is an admitted fact that the defendants, thereafter, has not challenged the rejection order of his appeal before any of the superior court.

18. In all the said proceedings, the issue with regard to possession of defendants in respect of subject land on the basis of purported deed of partition dated 25.06.2001 was directly and

substantially in issue and the same has been decided against the interest of defendants by both the above mentioned competent Civil Courts on merits. As such, defendants cannot ask this Court to uphold his possession by again referring to the evidence of his earlier suit, which has already been scrutinized by the two Courts including Hon'ble Appellate Court. Therefore, grounds raised by the defendants hardly provide any help to them to fortify their claim of possession over the suit land.

19. On the other hand, it is pertinent to note that the registered sale deed dated 24.05.2007 clearly demonstrates that the plaintiff has purchased the suit land from Tularam Kesaji Unde for a consideration of Rs.6,00,000/-. On the basis of said deed, M.E.No.1168 and other revenue records came to be notified in the name of plaintiff. No doubt, defendants have filed copy of 7B extract, which shows name of defendant no.1 against the suit land, the said record was challenged by the plaintiff. In the said proceeding i.e. ROR Appeal No.140/2009, the Tahsildar, by an order dt.23.12.2009 directed to remove the name of defendant no.1 from the record of suit land and eventually, name of plaintiff has been reinstated to the record. Therefore, it can be said that there is nothing concrete on record to fortify claim of defendants at this stage.

20. The defendants have placed reliance upon the affidavit of witnesses, who appear to have supported the claim of defendants in their respective statements. However, it is to be noted that the contents appearing in the affidavits of these

witnesses seem to be contradictory to the position reflecting in the registered deed of sale dated 24.05.2007 and consequent revenue records. Needless to state that the registered written instrument will certainly prevail over the affidavits tendered by the defendants. As such, affidavits of said witnesses do not provide any help to the defendants.

21. In sum and substance, the plaintiff has succeeded to establish prima-facie case in his favor. On the other hand, defendants have failed to fortify their claim of possession over the suit land. Moreover, the contentions raised by them have already been entertained and rejected by the competent civil courts. As such, balance of convenience also tilts in favor of the plaintiff. If under such circumstances, injunction is refused, an irreparable loss would be caused to plaintiff. Cumulative effect of all, I have answered point nos.1 to 3 in the affirmative and pass the following order:-

ORDER

1. The application at Ext.5 is allowed.
2. The defendants are hereby restrained from causing hindrance to the possession of plaintiff in respect of suit land till final disposal of the suit.
3. Costs in the main cause.

Date: 11th January, 2017.
Place: Ghansawangi

Sd/-
(J. M. Panchal)
Civil Judge (J.D.), Ghansawangi,
Dist. Jalna.

CERTIFICATE

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

Name of Junior Clerk : Amol C. Darewar

Name of court : Civil Judge (J.D.), Ghansawangi

Date : 11/01/2017

^{Sd/-}
Stenographer (L. G.)