

MHKO050016422021 	<u>ORDER BELOW EXH.5 in RCS NO.142/2021</u> Bhagwan Pandurang Karande Vs. Chandrakant Pandurang Karande and 2 CNR No.MHKO050016422021
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This is an application under Order XXXIX Rule 1 and 2 read with Section 151 of the Civil Procedure Code for grant of temporary injunction preferred by plaintiff to restrain defendants from disturbing his peaceful possession over the suit property.

2. The factual matrix of plaintiff's case runs as under:-

The property mentioned in paragraph no.1 of the plaint i.e. property bearing Gat No.224, total area 1.35R out of which open space **00.1.53R** is the disputed property. Henceforth, for the sake of brevity, the said property referred to as suit property.

3. It is the case of the plaintiff that the suit property is the joint and ancestral property of the plaintiff as well as defendant no.1. Accordingly, the 7/12 extract of the suit property bears the name of plaintiff and defendant no.1. It is the case of the plaintiff that the suit property was in joint ownership and possession of plaintiff as well as defendant no.1. The defendant no.1 agreed to relinquish his share in the suit property and accordingly on 23/12/2009 a registered relinquishment deed bearing no.6201/2009 was executed between plaintiff and defendant no.1.

4. It is the case of the plaintiff that since the year 2009, the plaintiff is peacefully enjoying his sole possession over the suit property. The defendant no.1 had some financial problems and therefore, he had sought loan from defendant no.2 in the year 2002. However, the defendant no.1 failed to repay the said loan and hence, the defendant no.2 filed a civil suit bearing R.C.S. no.96/2003 before Civil Court. The defendant no.1 failed to appear and contest the said suit and therefore the suit was exparte decreed on 26/09/2003, wherein it was directed by the Court that the defendant no.1 shall pay amount of Rs.10,300/- along with 6% interest.

5. When the defendant no.1 failed to comply the judgment and decree of R.C.S. No.96/2003, the defendant no.2 filed execution proceeding bearing R.D. no.190/2003 before Civil Court on 29/11/2003 and prayed for execution of judgment and decree dated 26/09/2003. In the said proceeding, the Court issued attachment warrant of the immovable property of the defendant no.1.

6. Accordingly, it is the case of the plaintiff that auction proceedings took place in relation to the suit property and on 19/12/2011, the defendant no.3 by way of said auction purchased the suit property for the consideration of Rs.1,10,000/- (Rupees One Lakhs Ten Thousand Only). It is the case of the plaintiff that the entire auction proceedings are conducted by the defendant no.1 by being hand in glove with defendant no.2 and 3, so as to cheat and malafidely take away the suit property.

7. Further, after the auction proceedings, the defendant no.1 to 3 with a intent to cheat the plaintiff, filed a compromise pursis on 16/09/2012 in Lok-Adalat and disposed off the said execution proceeding as the decree was satisfied. It is the case of the plaintiff that from the year 2009, i.e. from execution of relinquishment deed, the plaintiff is in exclusive in possession of the suit property and the defendant no.1 to 3 have no legal right, title and interest in the suit property. It is the case of the plaintiff that the entire execution proceeding, in which the auction took place was done in collusion by the defendants to cheat the plaintiff and he acquired knowledge regarding all these proceedings in the month of November 2020, when the defendant no.3 was trying to construct a compound wall over the suit property. According to the plaintiff, he is the original owner and possessor of the suit property . The defendant no.1 to 3 have no legal right, title and interest in the property. The plaintiff accordingly prays for grant of temporary injunction with a prayer to restrain the defendants from disturbing his possession over the suit property.

8. The plaintiff contends that, if the defendants are not restrained from disturbing his possession over the suit property, an irreparable loss would be caused to him as he is the original owner of the suit property. The plaintiff lastly submits that his application satisfies the triple test led down by the law and he accordingly prays for grant of temporary injunction.

9. The defendant no.1 failed to file written statement.

Accordingly, necessary order was passed by my learned predecessor on 30/09/2021, directing that the suit shall proceed without written statement of the defendant no.1.

10. The defendant no.2 resisted and vehemently opposed the instant application by filing reply at Exh.15 and denied in toto the entire averments of plaintiff. The defendant no.2 at the outset submitted that the entire transaction in relation to the suit property has taken place by virtue of judicial order passed in RCS 96/2003 and RD No.190/2003. The defendant no.2 submits that no question arises of causing disturbance to the plaintiff as according to the direction of this Court, the defendant no.3 is lawfully put in possession of the suit property by way of auction. After the said auction in, view of the direction of the Court, a sale certificate was granted by this Court in favour of defendant no.3 and accordingly in the office of Registrar, necessary deed bearing no.5252/2012 was registered. The defendant no.2 accordingly prays for rejection of the instant application.

11. The defendant no.3 filed his written statement below Exh18 and denied in toto the entire averments of the plaintiff. According to defendant no.3, he is a bonafide purchaser of the suit property by way of auction proceeding held in execution proceeding bearing R.D. No.190/2003. It is his contention that the relinquishment deed is false and bogus. The property of the plaintiff and the suit property is completely different. According to defendant no.3, he is put in ownership and possession through the Court and

therefore the entire averments being false and devoid of merits, the instant application cannot survive. Both the defendant no.2 & 3 pray for rejection of the instant application.

12. Following points arise for determination and I have recorded my findings with reasons to be followed thereon :-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the plaintiff proves prima facie case lies in his favour?	No
2)	In whose favour the balance of convenience lies?	Defendant No.3
3)	Whether the plaintiff would be put to irreparable loss, if injunction is not granted?	No
4)	What order?	As per final order.

REASONS

13. I have heard Mr. Patil learned counsel for the plaintiff , Mr. Jamdar the learned counsel for defendant no.2 and Mr. Joshi, the learned counsel for defendant no.3.

14. As to point nos. 1 to 4 :- As point nos. 1 to 4 are inter linked with each other I prefer to discuss it under one common caption. Mr. Patil submitted in consonance to his plaint and application. He submitted that the defendant no.1 has executed an relinquishment deed in the favour of the plaintiff and since 2009 he is in possession of the same. He further submits that the defendant no.1 to 3 acted with in collusion with each other with a intent to cheat the plaintiff. He further submits that the entire proceeding of

auction which took place in R.D. no.190/2003 itself is false, illegal and not tenable in the eyes of law. He submitted that as the plaintiff is the original owner and possessor of the suit property, the defendant no.3 cannot claim any legal right, title and interest over the same. In order to substantiate his submissions Mr. Patil invited my attention towards documents filed on record. He submitted through his application that, prima-facie case and balance of convenience lies in favour of plaintiff and irreparable loss would be caused to the plaintiff which could not be compensated in terms of money and accordingly prayed to allow the instant application.

15. Per Contra Mr. Jamdar and Mr. Joshi submitted that plaintiff has filed instant application with ulterior motive just to harass the defendants and the application is not maintainable. They submitted that the defendant no.3 is the owner and possessor of the suit property by virtue of registered sale certificate of competent court after following due procedure of law and therefore the application being devoid of merits has to be rejected.

16. It is canon of settled legal principle that power to grant injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as the matter of right or course. The grant of injunction is at the discretion and must be exercised in favour of the party only if the Court is satisfied that, unless the other party is restrained by an order of injunction, irreparable loss or damage would be caused to

that party.

17. In case of Gujrath Bottling Co. Ltd Vs. The Coca-Cola Co., And others (1995) 5 SCC 545 = AIR 1995 SC 2372, wherein Hon'ble Supreme Court has held that-

Under order 39 of the Code of Civil Procedure, jurisdiction of the court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court on being approached, will, apart from other considerations, also look to the Conduct of the party involving the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature the party involving the jurisdiction of the court has to show that he himself was not at fault and that he was not unfair or inequitable in his dealings with the party against who he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under order 39 Rule 1 or Rule 2 of the Code of Civil Procedure but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.

18. Reverting back to the hub of the matter, the real bone of contention between the parties inter se dispute is the execution of sale certificate in the name of defendant no.3. and title over the suit property. The plaintiff has come up with the case that he is the original owner and possessor of the suit property i.e. Gat no. 224, total area 1.33HR out of which 0.01HR according to the

relinquishment deed dated 23/12/2009. On the contrary the defendant no.3 places his reliance upon certificate of sale dated 16/04/2012 and registered deed dated 07/08/2012 executed in pursuance to the order of the Court.

19. Before discussing the matter on merits, I find it appropriate to discuss argument canvased by learned counsel Mr. Joshi appearing for defendant no.2. During the course of arguments, he has submitted that the defendant no.3 has filed certified copy of relinquishment deed dated 23/12/2009, which he has acquired from the office of Registrar, Ichalkaranji. He submits that careful perusal of description of property in the said certified copy shows that it is in relation to Gat No.524, whereas the original copy filed by plaintiff below Exh.3, shows Gat number as 224. He further submits that careful perusal of the original copy filed by the plaintiff clearly shows that there is a minute tampering done in the property number. He submits that it is clearly seen that Gat No.224 has been falsely written and the original relinquishment deed has been tampered with.

20. I have carefully gone through the record. Bare perusal of the certified copy of relinquishment deed shows that the same is in relation to Gat No.524. Upon comparing the said with original relinquishment deed it can easily be seen that there is some tampering in the Gat number. It is seen that the first digit is over written to so as to show Gat No.224, whereas, in reality it is Gat no. 524. Thus, at the very outset, prima facie it is seen that there is

definitely some tampering done in the original relinquishment deed by the plaintiff. It is settled principle of law that the Court should not act as an expert. However, perusal of original relinquishment deed at the very threshold reveals tampering. Hence, an adverse inference needs to be drawn against the plaintiff as the said act is very serious in nature.

21. Perusal of record further reveals that the defendant no.2 had filed a suit against defendant no.1 bearing R.C.S.96/2003, which was decreed *ex parte*. It is further seen that, in pursuance of the same, execution proceeding bearing R.D.190/2003 were filed, in which warrant of attachment of property under Order XXI Rule 43 of Civil Procedure Code was issued against defendant no.1. It is further clear on record that accordingly auction proceedings took place and defendant no.3 being the highest bidder was sold the suit property of Gat no.224. Further, it is seen that after the auction proceeding, sale certificate was issued and accordingly on 07/08/2012, registered deed took place before the office of Registrar in relation to the suit property. Thus, at the very outset the defendant no.3 appears to be bonafide purchaser of the suit property who has purchased the same by virtue of legal auction taken place by way of valid, legal and judicial order. So far as the title of the suit property is concerned, the defendant no.3 appears to be in a much better position than the plaintiff as the defendant no.3 is legal and bonafide purchaser. The relinquishment deed upon which the plaintiff is relying cannot be considered at all at this juncture as there exists a serious doubt on its genuineness. As observed above, there appears to be tampering done

in the said document.

22. Thus comparing the prima facie case, balance of convenience and hardship, it is needless to mention here that the defendant no.3 would suffer most as he is a bonafide purchaser. So also, the facts alleged by both sides in dispute can be adjudicated by adducing evidence by both sides. It is pertinent to mention that pleadings of rival sides are counter blast to each other and needs to be adjudicated by framing issues and by leading evidence by parties inter se in dispute. As of now, granting injunction would result into greater hardship to defendant no.3 as compared to plaintiff.

23. On perusal of prayer of plaintiff, the stand taken by him appears to be a mere moon shine. The defendant no.3 appear to be in quids in position as compared to plaintiff. Hence, I concur with submissions of Mr. Jamdar and Mr. Joshi and accordingly answer points Nos. 1 to 3. In the result, I am inclined to pass the following order : -

ORDER

- 1) The application at Exh.5 hereby stands rejected.
- 2) Parties to bear their own costs.

Ichalkaranji
Date: 07/11/2022

(S. A. Ingley)
2nd Jt. Civil Judge Jr. Dn.,
Ichalkaranji

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of stenographer	R. D. Jadhav.
Name of Court	S. A. Ingley. 2 nd Jt. Civil Judge, Jr. Dn. & Judicial Magistrate F.C. Ichalkaranji.
Date of Dictation	07/11/2022
Judgment/order signed by P.O. on	07/11/2022
Judgment/order uploaded on	07/11/2022