

Order passed below Exh.5 in Regular Civil Suit No.149 of 2016

This is an application filed by plaintiff for grant of interim injunction restraining defendants from disturbing his possession over suit property 1-A under Order 39 Rule 1 of Civil Procedure Code.

02. 36 Are area out of Block No.1536 ad-measuring 1 Hector 34 Are situated at Kothali, Tal.- Shirol, District Kolhapur more particularly described in plaint para No.1-A is the suit property of the present suit. Further sale deed bearing registration No.2290/2001, dated 17/05/2001 of 10.70 Are area out of Block No.1536 ad-measuring 1 Hector 34 Are situated at Mouje Kothali executed by defendant No.12 in favour of defendant Nos.1 to 10 more particularly described in plaint para No.2-B is also subject matter of the present suit. (Said properties are hereinafter referred as ' **suit property 1-A** and **sale deed suit property 1-B** ' for the sake of brevity and convenience.)

03. Plaintiff is averting that Block No.1536 was originally owned by Annaso Babgonda Patil and Mahaveer Babgonda Patil. From said Block number northern 81 Are area was acquired by the Government for rehabilitation purpose. Accordingly, possession of northern 81 Are area was obtained from original owners by the order of Collector as per measurement map. Kabjepatti Panchanama was also prepared on 09/10/2000. Mutation entry No.4628 is also effected. Said fact is within knowledge of defendants and original owners of Block No.1536. Out of said acquired area from Block No.1536, 36 Area was allotted by Collector, Kolhapur to project affected person Smt. Laxmi Ramchandra Gaikwad. Possession of said area was handed over to her vide Kabjepatti Panchanama dated 17/06/2013. Laxmi Gaikwad sold said 36 Are area to

Dashrath Maruti Mardane vide registered sale deed bearing No.1626 dated 15/04/2014. Thereafter, Dashrath Mardane came in possession of said property. Plaintiff purchased said 36 Are i.e. suit property 1-A from Dashrath Maruti Mardane vide registered sale deed bearing No.2274 of 2014 dated 23/05/2014. Now, plaintiff is in actual possession of suit property 1-A. Defendants have created a farce of sale deed of 10.70 Are area out of Block No.1536 including the property acquired by the Government. Said sale deed is registered at serial No.2290/2001. It is illegal and *void ab-initio*. Said sale deed is also hit by provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act. On the basis of said sale deed defendants are obstructing plaintiff's possession over suit property 1-A. Hence, this suit is filed.

04. Written statement and say of defendants is at Exh.20. They denied all adverse averments of plaintiff. They contended that plaintiff is not in actual possession of suit property 1-A. No document is produced to show that Laxmi Gaikwad was allotted said portion from Block No.1536. Sale deed of defendants of 10.70 Are is executed before allotment of property to Laxmibai Gaikwad. It is not hit by provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act. Defendants are co-sharers and, therefore, no injunction can be granted against them. Defendants have filed Reg. Civil Suit No.103/2016 against father of plaintiff and interim injunction is granted in said suit. Therefore, plaintiff's father caused filing of this suit through his son. Plaintiff has suppressed material fact about Reg. Civil Suit No.103/2016. Plaintiff has not paid stamp on the sale deed bearing No.2290/2001. If interim injunction is granted, plaintiff will cause execution of order in Road/SR/21/2013 illegally. Therefore, they prayed for rejection of application.

05. Perused application, say and record of the case. Heard advocates for parties. Following points arise for my determination and I am recording my findings thereon for the reasons to follow.

NO.	POINTS	FINDINGS
1.	Whether plaintiff proves prima-facie case ?	Yes.
2.	Whether balance of convenience lies in favour of plaintiff ?	Yes.
3.	Whether plaintiff proves that he will suffer irreparable loss, if interim injunction as prayed, is refused ?	Yes.
4.	What order ?	As per final order.

REASONS

As to point Nos.1 to 4 :-

06. These point are interconnected and therefore, for convenient discussion I am taking them together for my consideration.

07. Advocate for plaintiff argued that 81 Are northern area out of Block No.1536 is acquired by the Government and mutation entry alongwith joint map is filed on record at Exh.3/2 and 3. In said map (Exh.3/3) the property acquired by Government is clearly shown. Defendants have created a farce of sale deed dated 17/05/2001 and as per map shown in said sale deed they have purchased the area which was acquired by the Government. Therefore, said sale deed is illegal. Further said sale deed is only of 10.70 Are area and therefore, it is executed in violation of Bombay Prevention of Fragmentation and Consolidation of Holdings Act. On the other hand, 36 Are area out of northern 81 Are property acquired by Government, was allotted to Laxmi Gaikwad and its possession was specifically handed over to her by preparing Kabjepatti Panchanama. Laxmi Gaikwad sold said property to Dashrath Mardane and

plaintiff purchased the same from him. All documents showing the transactions are produced on record. Plaintiff was not party to Reg. Civil Suit No. 103/2016. Further his father is not predecessor in title of suit property Block No.1536, therefore, averments of his father are not binding on him. Defendants can not claim any right on the basis of illegal sale deed.

08. On the other hand, advocate for defendants argued that the suit is outburst of order passed below Exh.5 in Reg. Civil Suit No.103/2016. This suit is filed for pressurizing defendants to withdraw Reg. Civil Suit No.103/2016. If order of status-quo is directed to be maintained, it will serve the purpose. Name of defendants are mutated on the 7/12 record of Block No.1536, therefore, defendants are co-sharers in Block No.1536 and thus injunction can not be granted against them. If injunction is granted, defendant will not be able to approach their agricultural properties situated on northern side of the suit property. Therefore, they will suffer irreparable loss. He prayed for rejection of application or alternatively order extending status quo till final disposal of the suit.

09. In this case there are two aspects involved. Firstly, legality of sale deed of defendants suit property 1-B and secondly, possession of suit property. Perusal of mutation entry extract of mutation entry No.4628 filed at Exh.3/2 reveals that on 09/10/2000 by preparing joint measurement map 81 Are area out of Block No.1536 was acquired by the Government. Certified copy of said joint measurement map is filed at Exh.3/3. Perusal of said map clearly shows that northern 81 Are area of Block No.1536 was acquired by the Government. Certified copy of suit property 1-B sale deed bearing registration No.2290/2001 dated

17/05/2001 is at Exh.3/7. Perusal of said sale deed reveals that it is in respect of 10.70 Are. area out of Block No.1536. In said sale deed it is mentioned that said 10.70 Are is excluding 81 Are acquired by the Government. However, the map annexed to said sale deed shows that northern side road on the northern boundary of Block No.1536 is purchased by said sale deed. Said road is shown from the area, which is acquired by the Government as per joint map (Exh.3/3). Further, No Objection Certificate filed at page No. 8 of said sale deed clearly shows that said No Objection was given for the area excluding 81 Are area out of Block No.1536 acquired by the Government. Therefore, even if said Certificate is considered, it does not authorize sale of any area out of the property acquired by the Government. Therefore, I am prima-facie satisfied that said sale deed about the area which is acquired by the Government, is illegal.

10. Now, coming to second aspect of possession over the suit property 1-A, plaintiff has produced certified copy of mutation entry No.8227 at Exh.3/4. As per said mutation 36 Are area out of 81 Are. in Block No.1536 was allotted to Laxmi Ramchandra Gaikwad. Copy of Kabjepatti Panchanama is also filed at Exh.3/5, which supports handing over of possession from the Government to Laxmi Gaikwad. As stated above, after acquisition possession of 81 Are was obtained by the Government vide Kabjepatti Panchanama and measurement map. Plaintiff has also filed copy of sale deed bearing No.1626/2014 dated 15/04/2014 executed by Laxmi Ramchandra Gaikwad in favour of Dashrath Maruti Mardane at Exh. 24/1. Perusal of said sale deed reveals that suit property 1-A was sold by Laxmi Gaikwad to Dashrath Mardane and possession was also handed over to him. Plaintiff has also filed copy of his sale deed dated 23/05/2014 bearing No.2274/2014 executed by Dashrath Maruti

Mardane in favour of plaintiff. Perusal of said sale deed reveals that it is in respect of suit property 1-A and there are specific recitals about the handing over of possession to plaintiff. Therefore, in my view, prima-facie plaintiff has shown that he has legally purchased suit property 1-A and he is in possession of the said property. Plaintiff has also filed certified copy of application filed by Kalu Babu Zore to Tahasildar on 18/01/2014 at Exh.24/2. In said application Kalu Zore has averted that defendant No.8 Santosh Upadhye is obstructing him and claiming consideration for using the road allegedly purchased by sale deed suit property 1-B.

11. Further defendants have filed affidavit of Sanjay Balgonda Patil (Exh.31) in support of sale deed suit property 1-B and their possession over 10.70 Are. However, as stated above, prima-facie said sale deed itself is illegal and, therefore, said affidavit can not be considered. Defendants have also filed affidavit of Vijay Kallappa Khavate (Exh.32) who is panch on the Kabjepatti Panchanama by which possession of suit property 1-A was handed over to Laxmi Ramchandra Gaikwad. In said affidavit (Exh.32) it is mentioned that no Kabjepatti Panchanama was actually prepared. However, said Vijay Khavate has filed pursis Exh.35 that defendant No.8 Sanjay Upadhye has got said affidavit executed by misleading him and he has also filed application for discarding said affidavit at Exh.34, which is allowed. On the other hand, plaintiff filed affidavit of Annaso Babgonda Patil. He is another panch on the Kabjepatti Panchanama of handing over possession to Laxmi Gaikwad. He has specifically supported plaintiff's case about execution of Kabjepatti Panchanama, plaintiff's possession over the suit property and he has further stated that his consent was obtained on the sale deed suit property 1-B by misleading him. Therefore, even on the basis of affidavits possession of plaintiff is prima facie proved.

12. On the other hand, defendant has filed certified copy of Exh.1 in Reg. Civil Suit No.103/2016, copy of application Road/SR/121/2013, Government Resolution and mutation entry No.7327 with list Exh.28. However, perusal of said copies reveal that though plaintiff's father was party to Reg. Civil Suit No.103/2016 and he had filed application Road/SR/121/2013, plaintiff was not party to these proceedings. It is not the case that plaintiff's father was predecessor in title of suit property 1-A. Therefore, the averments made by plaintiff's father are not binding on plaintiff. Mere mutation about sale deed suit property 1-B will not make it binding or legal. Therefore, said documents are also not helpful to defendants.

13. Advocate for defendants has placed reliance on following judgments.

(1) Prakash S. Akotkar and others Vs. Mansoorkha Gulabkha and others, AIR 1996 BOMBAY 36.

In this judgment it is held that co-owner can not claim injunction against other co-owners restraining them from interfering with his possession and enjoyment of suit property so as to exclude them from exercising their right as co-owners. There can be no dispute about this well settled exposition of Law. However, as stated above sale deed suit property 1-B is prima-facie illegal and, therefore, defendants can not be considered as co-owners of Block No.1536. Further, suit property 1-A i.e. 36 Are area was specifically allotted to Laxmi Gaikwad by Government by mentioning specific boundaries. Therefore, principle of co-ownership will not apply to said suit property 1-A.

(2) Smt. Sarladevi Kundanlala Bandawar, Vs. Shailesh Gourishankar Namdeo, AIR 1996 BOMBAY 98.

In this judgment it is held that person in possession can claim injunction against every one including rightful owner and rightful owner can not evict him by force. However, in present case defendants are not alleging their possession over suit property 1-A. Therefore, with due respect ratio laid down in said judgment will not be applicable to present suit.

(3) Dasharath Bhaguji Jadhav Vs. Kisan Bhaguji Jadhav, 2015 (3) ALL MR 163.

In this judgment it is held that after partition plaintiff is not entitled to right of way through property of others when there is specific mention in the partition deed that existing roads should be used by the parties and plaintiff had access through southern side of its land. However, facts of present case are completely different.

(4) Laxman Genu Jagtap Vs. Raghunath Tatyaba Jagtap, 2016(4) ALL MR 318.

In this judgment it is held that question of handing over possession of 19 Are by Consolidation Officer to defendants was involved and injunction was sought without specifying exact area and in such situation injunction was refused. However, that is also not the situation in present suit.

14. On the other hand, advocate for plaintiff placed reliable on following judgment.

Vimal Madhukar Deshmukh Vs. Nagorao Babanrao Ghodaskar, 2008(3) Mh.L.J.868.

In this judgment it is held that no person can transfer a better title than what he himself has and no person can transfer the property of which he is not the owner. In the present case also after acquisition of 81 Are area from Block No.1536 original owners of Block No.1536 were not entitled to transfer said area to defendants. Therefore, prima-facie said sale deed transferring the area which was already acquired by the Government, is illegal. Further, as stated above, plaintiff has prima-facie proved his possession over suit property 1-A. Obstruction at the hands of defendants is also clear from their contention and documents filed on record. Prima-facie defendants have no right to obstruct plaintiff's possession over the suit property 1-A. Therefore, in my view, plaintiff has proved prima-facie case and principles of balance of convenience and irreparable loss are also in his favour. Hence, for the reasons stated above, I answer point Nos.1 to 3 in the affirmative and in answer to point No.4 pass following order.

ORDER

Defendants are restrained from obstructing plaintiff's possession over suit property 1-A till final disposal of this suit.

Sd/-

(Mahesh T. Patankar)

Date : 01/03/2017.

Joint Civil Judge Junior Division,
Jaysingpur.

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 the Stenographer	Shri.A.S.Tiruke
Name of Court	Jt.C.J.J.D.& J.M.F.C., Jaysingpur.
Date of Dictation.	01/03/2017.
Judgment/order signed by the PO on	07/03/2017.
Judgment/order uploaded on	09/03/2017.