



Order Below Exh. 5 In RCS No. 83/2025

CNR No. :-MHKO110005422025

Passed on 01/07/2025

The plaintiff has filed an application as per Order XXXIX Rule 1 and 2 of the Code of Civil Procedure and thereby claiming temporary injunction i.e., stay of construction in suit property against the defendant No.1.

Suit Property

2] The land area admeasuring 4H = 36R in land Block No.510 situated at village Ambap, Tal. Hatkanangale, Dist. Kolhapur is the subject matter of this suit and application. The description of the above suit property is more particularly described in para No. 1 of the plaint (Hereinafter referred to as “suit property” for sake of brevity).

Facts of the plaintiff's case

3] It is case of the plaintiff that, suit property is an ancestral property of plaintiff and defendant Nos.2 to 6. Suit property is yet to be partitioned among plaintiff and defendant Nos.2 to 6. Defendant Nos.1 and 2 have conspired together and cheated on Ratnabai thereby on 06/08/2018 executed registered Sale Deed of land admeasuring area 0H=18R.16 in the name of defendant No.1. However, defendant No.1 has not in possession of suit property. It is further contended by the plaintiff that, alleged Sale Deed is illegal and not binding on his share. Defendant No.1 has started construction on suit property. As there is no partition of suit property, it is necessary to restrain defendant No.1 from construction in the suit property. Hence, plaintiff is constrain to file this suit for partition, declaration and injunction and present application for temporary injunction against defendant No.1.

4] The defendant No. 1 filed his written statement at Exhibit No.20 and denied the contentions of application in toto. It is contention of the defendant No.1 that, there was oral partition among plaintiff and defendant Nos.2 to 6 and thereby Ratnabai received 0H=18R land in partition. Accordingly, name of Ratnabai recorded to the revenue record. On 10/08/2018 Ratnabai has sold land area admeasuring 0H=18R.16 in land Block No.510 to defendant No.1 by registered Sale Deed No.5345/2018. Accordingly, his name also recorded to the Record of Rights by Mutation Entry No.11525. Since then defendant No.1 is in possession of the suit property. It is further contended by that, defendant No.1 has started construction on land purchased from Ratnabai and plaintiff has no business with it. Plaintiff has no cause of action. Hence, prayed for rejection of this application.

5] Heard learned advocate for plaintiff and learned advocate for defendant No.1.

6] Considering the rival contentions of the parties, following points arose for my determination and to which I have given findings with reasons stated below:

<u>Sr. No</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether plaintiff has prima-facie case exists in his favour ?	.. No ..
2.	Whether balance of convenience lies in favour of plaintiff ?	.. No ..
3.	Whether plaintiff suffer irreparable loss if the injunction is not granted ?	.. No ..
4.	What order ?	Application is rejected.

REASONS

Argument on behalf of plaintiff :

7] The learned advocate for plaintiff has argued that, the suit property is not partitioned among plaintiff and defendant Nos.2 to 6. As per the contention of defendant No.1, there is no Deed of partition on record. Originally Ratnabai was not in possession over the suit property. Ratnabai has no right to alienate the same. Defendant No.1 applied for Electricity connection in the year 2025, it means in the year 2018, defendant No.1 is not in possession. The son of Ratnabai filed an affidavit to support the contention of plaintiff. Therefore, construction started by defendant No.1 is illegal and liable to be stayed. He further argued that, plaintiff has prima facie case and if the temporary injunction is not granted, it will cause irreparable loss to plaintiff to such an extent, that it could not be compensated in terms of money. Hence, he prayed to allow the application.

8] To support the argument plaintiff has relied on documents at list of Exh.3 i.e., copy of 7/12 extract of land Block No.510, photographs of suit property, photocopy of Registered Sale Deed No. 5345/2018, photocopy of complaint filed at office of M.S.E.B., photocopy of complaint application filed to Talathi, Ambap, photocopy of written statement in RCS No.57/2020 filed by defendant, photographs of suit property, certified copy of Mutation Entry, photocopy of death certificate father of plaintiff, copy of Exhibit 1 in R.C.S.No.57/2020, copy of Exhibit 31 in R.C.S.No.57/2020, photocopy of R.T.S. Appeal, photocopy of M.S.E.B. office documents, copy of affidavit of Subhash Pandurang Mohite in RCS No.57/2020, photocopy of notice sent by Sub Divisional Officer, Ichalkaranji to plaintiff.

9] The learned advocate for defendant No.1 has argued that, as the plaintiff has filed suit for partition it is necessary to include all properties as per Order VII Rule 3 of the Code of Civil Procedure by virtue of common hotchpot however, he failed to do so. The entries to 7/12 Extract are not challenged by plaintiff. On perusal of 7/12 Extract it seems that, the name of parties are not recorded in common(समाईकात). Defendant No.1 is in possession over the suit property since the date of Sale Deed. He further argued that, plaintiff has no prima facie case and if injunction is granted it will cause irreparable loss to defendant No.1 and not plaintiff. Hence, he prayed to reject the application.

10] To support the argument defendant No.1 has relied on documents i.e., copy of light bill in the name of defendant No.1, photocopy of status quo application against defendant No.1, copy of 7/12 Extract of land Block No.510, copy of 7/12 Extract of land Block No.510, copy of affidavit of Sudhir Sarjerao Bhosale, copy of affidavit of Sushant Yashwant Bhosale, copy of affidavit of Yuvraj Bapu Nirmale, copy of affidavit of Pandit Ganpati Nirmale.

As to Point 1 to 3 :-

11] To avoid the repetition of facts, point Nos. 1 to 3 clubbed together for discussion. However, separate findings have been recorded against each other.

12] The first rule to decide the application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure is that, the plaintiff must make out prima facie case in support of right claimed by him. The existence of prima facie right and infraction of such right is a condition precedent for grant of temporary injunction. Prima facie case means that the contentions which the plaintiff is raising merit consideration and are not liable to be rejected summarily.

13] The plaintiff has filed suit for partition, declaration and injunction against the defendant Nos. 1 to 6 and present application against defendant No.1. I have perused 7/12 Extract of land Block No.510. It appears that, the name of defendant No.1 is appeared in the column of ownership for land area admeasuring 0H=18R.16 by Mutation Entry No.11525.

14] I have perused registered Sale Deed No.5345/2018. It appears that, on 06/08/2018 Sale Deed was executed by Ratnabai Dhondiba Khot in favour of defendant No.1 namely, Govind Ganpati Powar of land area admeasuring 0H=18R.16 in land Block No.510 situated at village Ambap for consideration of Rs.4,00,000/-. As per the contents of Sale Deed, the possession was handed over to the defendant No.1. It is pertinent to note that, the name and signature of plaintiff's brother namely, Dattatray Anand Mohite appeared as identifier on Sale Deed. As per the contention of plaintiff the alleged Sale Deed is illegal and liable to be rejected. This is not the stage to discuss whether the alleged Sale Deed is legal or illegal. It will decide after the evidence and at the time of final hearing.

15] It is argued by the plaintiff that, the defendant No.1 has applied for electricity connection in the year 2025 therefore, it is clear that he was not in possession of suit property in the year 2018. Though the Sale Deed was executed on 06/08/2018 and defendant No.1 applied for electricity connection in the year 2025, it does not mean that in the year 2018 defendant No.1 was not in possession. The document itself contents that, the possession of property is handed over to the defendant No.1 from the date of execution.

16] Moreover, defendant relied on affidavit of Sudhir Sarjerao Bhosale, Sushant Yashwant Bhosale, Yuvraj Babu Nirmale and Pandit

Ganpati Nirmale to support the version of defendant No.1.

17] Furthermore, the learned advocate for defendant No.1 has argued that, as the suit is filed for partition, all properties must be taken together as per common hotchpot. However, the plaintiff kept mum on this point. Therefore, at this stage it is immaterial that whether all properties are taken together for partition or not. There are rival contentions of the parties regarding the partition between plaintiff and defendant Nos.2 to 6. Whether partition has carried out or not is also finally decided after evidence.

18] Considering the Sale Deed on record I come to the conclusion that defendant No.1 has possession over the suit property. So also, the documents of ownership of the suit property stands in the name of defendant No.1. In such circumstances the relief of injunction can not be granted against defendant No.1.

19] It is not the case of the plaintiff that, he has challenged revenue record. Admittedly, the entries to the Rights of Record are for fiscal purpose and can be rebutted. Moreover, the registered document is best evidence in the eyes of law. Hence, considering the documentary evidence on record, prima facie the suit property is possessed by defendant No.1.

20] Considering the above discussion and facts and circumstances of the case, plaintiff failed to put forth prima-facie case in his favour. Balance of convenience does not lies in favour of plaintiff. If injunction is not granted then there would be no irreparable loss caused to the plaintiff. However, if injunction is granted then definitely the defendant No.1 would suffer irreparable loss. Hence, I answered point No. 1 to 3 in the negative.

(7)

As to point No. 4:

21] In view of the aforesaid discussion and as I hold that the plaintiff failed to made prima-facie case in his favour he is not entitle for injunction as sought. In the result, I pass following order.

ORDER

1. The application (Exh. 5) is rejected.
2. Costs in cause.

Date : 01/07/2025
Peth-Vadgaon.

(J.N. Bhasme)
Jt. Civil Judge Junior Division,
Peth-Vadgaon.