

MHKO110009612022 	<u>ORDER PASSED BELOW EXH. 5 in REGULAR CIVIL SUIT NO. 122/2022 Shri.Munir Bandu Jamadar Versus Shri.Balasaheb Raygonda Patil etc.</u>
---	---

This is an application filed by the plaintiff to restrain defendants in order to obstruct the possession of the plaintiff and not to create any third-party interest in the suit property, as per Order XXXIX, Rule 1 and 2 of Code of Civil Procedure, 1908 (hereinafter for the sake of brevity referred to as “CPC”)

Brief facts of the application are as under :-

02. Survey No. 224 (p) block No. 20, New CTS No. 1011, area admeasuring 1023. 8 sq. mtrs., including house property and one iron cart and hotel thereon, situated in village: Herle, Tal.: Hatkangale, Dist: Kolhapur (hereinafter for the sake of conveyance referred to as “the suit property” more particularly described in the para No. 1 of the application). The suit property was previously owned by the government. In the year 1967, predecessor of the plaintiff had purchased the suit property in auction. Accordingly, he had deposited certain amount with the government. Since then, the plaintiff is in possession with the suit property. However, in the year 1969 due to job, father of the plaintiff shifted to another place. During that period work of city survey was carried out and in absence of father of the plaintiff, name of predecessor of defendants mutated on revenue record.

03. Thereafter, father of the plaintiff filed application before City Survey officer bearing application No. 24/1990. Accordingly, name of predecessor of defendants was deleted and name of the plaintiff father was restored. Being aggrieved of said order the predecessor of defendants filed appeal before Superintendent, Land Record, Sindhudurg and same was allowed.

..2..

Thereafter, father of the plaintiff filed appeal before Dy. Director Land Record, Nashik and said appeal was partly allowed. Further, defendants had filed suit bearing No. 651/1993 against father of the plaintiff for injunction and declaration. However, same was dismissed. Despite this situation by taking disadvantage of revenue records defendants are in process to sell the suit property with the help of Kapil Bhosale and Arun Patil. On 18.05.2022 defendants came in the suit property and hurled abusive words to the plaintiff and they create hurdle in repairing work of the suit property. Furthermore, one Kapil Bhosale threatened to the plaintiff that he evicts him from the suit property. Defendants are disturbing possession of the plaintiff. Hence, he has filed suit against defendants. However, hearing and disposing of the suit will take time, till then the plaintiff has apprehension. Therefore, he has filed present application.

04. Defendants appeared but failed to file their say within statutory limitation, hence the application is proceeded without say of defendants. During arguments also defendants were absent, hence application proceeded without their argument.

05. Heard Ld. Advocate for the plaintiff. He reiterated his contention of the application. He placed his reliance on documents filed along with list of documents at Exh. 3. He argued that if defendants succeeded to create third party interest in the suit property, entire purpose to filing the suit will be frustrated. Moreover, previously status-quo is granted by the Court and till today same is continued. Hence, no prejudice will cause to defendants if application is allowed. He prayed to allow the application

06. The following points arise from my determination, on which I have recorded my findings, with reasons, therefor-

..3..

Sr. No.	Points	Findings
1.	Does the plaintiffs made out that he has prima facie case ?	...Yes
2.	Does the plaintiff prove that he will suffer irreparable loss, if injunction is not granted ?	...Yes
3.	Does the plaintiff further prove that balance of convenience lies in his favour ?	...Yes
4.	What order ?	...Application is allowed

07. It is settled law that in order to grant injunction application the court must consider following ingredients :

- a. Prima Facia case
- b. Balance of convenience
- c. Irreparable loss.

- REASONS -

Point No. 1 :-

08. Point No. 1 is related to prima facie case. A word prima facie case is not defined in Code of Civil Procedure. However, the Hon'ble Supreme Court in various judgments laid down meaning of the same. Prima Facie case means

that the Court should be satisfied that there is a serious question to be tried at the hearing, and there is a probability of plaintiff obtaining the relief at conclusion of the trial on the basis of the material placed before the Court. Hence, firstly, it is necessary to see whether there is prima facie case in favour of the plaintiff. In order to decide the question, it is necessary to see contentions of the plaintiff. The present suit is for injunction. It is admitted position that at present names of defendants are mutated on property card of the plaintiff. However, it is case of the plaintiff that he is owner of the suit property and name of defendants were mutated due to some inadvertence. In support of his contention, he filed list of documents at Exh.3. After perusal of the same more particularly challan, it appears that deceased father of the plaintiff had deposited amount in respect of auction took place of the suit property. Further, from the order of Land Inspector, Hatkangale it appears that name of deceased father of the plaintiff was restored. Furthermore, from the order of Dy. Director, Nashik it appears that dispute in respect of the suit property again remanded before the Dy. Surpridentant of Land Record, Hatkangale. Moreover, from the record it appears that earlier suit was filed by defendant No. 1 to 4 and 7 to 9 in order to restraining the father of the plaintiff and others, in which they sought interim injunction against the father of the plaintiff, but record shows that interim injunction application was rejected and same was confirmed by Hon'ble Session Court. From the perusal of record, it appears that the plaintiff is in possession. In order to decide the injunction application factum of possession is necessary. Considering the documents on record, it appears that the plaintiff is in possession of the suit property. As against this, defendants failed to bring any material which shows that they are in possession. Therefore, I prima facie hold that the plaintiff has prima facie case. Accordingly, I answer point No. 1 in the affirmative.

Point Nos. 2 and 3 :-

09. Point Nos. 2 and 3 are related to balance of convenience and irreparable loss. According to settled principles of law, the plaintiff must be proved that balance of convenience lies in his favour and irreparable loss cause to him if injunction is refused. It is contention of the plaintiff that defendants are in process to sell the suit property. In support of his threat, he has filed affidavit. From the discussion of point No. 1, I already held that the plaintiff is in possession of the suit property, in this situation if defendants are succeeded to create third party interest in the suit property, it will create multiplicity of litigation. The main object of the injunction is to save the suit property till final adjudication of the suit. If suit property will not survive, entire purpose to filing the suit will be frustrated. Considering this, I am in view that if injunction is not granted irreparable loss cause to the plaintiff. Hence, balance of convenience also lies in favour of the plaintiff. Further, there is no prima facie evidence on record to show that irreparable loss cause to defendants, if injunction is granted. Accordingly, I answer point No. 2 and 3 in affirmative.

Point No. 4:-

10. Considering the discussion of point Nos. 1 to 3, it appears that the plaintiff made out prima facie case, further balance of convenience lies in favour of the plaintiff and irreparable loss cause to the plaintiff, if injunction is not granted. In this peculiar situation, it would be appropriate to grant injunction in favour of the plaintiff. However, it is necessary to mention that the plaintiff himself filed pursis at Exh. 25 and contending that defendant No. 6 died, hence he prayed to delete her name, but till today the plaintiff did not take any step to delete her name. Therefore, it would not be appropriate to grant relief against dead person. Hence in answer to point No. 4, I pass the following order :

..6..

- **ORDER** -

1. Application (Exh. 5) is allowed.
2. The defendants No. 1 to 5 and 7 to 9, their agent, servant and any person claiming through them are temporarily restrain till disposal of the suit, in order to create any third-party interest in respect of the suit property and further to disturb possession of the plaintiff.

Peth-vadgaon.

(S.D.Shirsat)

Dated:- 18/10/2022

02nd Jt C.J.J.D.Peth-vadgaon.