

MHKO110009682023 	<u>ORDER BELOW EXH.05 IN</u> <u>REGULAR CIVIL SUIT NO.158/2023</u> (Hasan Ali Panhalkar Versus Husen Ali Panhalkar and another)
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Present application filed by the plaintiff against defendant No. 2 for not to disturb possession of the plaintiff and not to alienate 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 application of the plaintiff are as under :-

02. Gat No. 26A, area admeasuring 2H.17R, out of which area admeasuring 0.40R situated in village Peth-Vadgaon, Tal. Hatkangale, Dist. Kolhapur (more particularly described in para No. 1 of the application, hereinafter for the sake of brevity referred to as the suit property.) It is contention of the plaintiff that the suit property is ancestral property of plaintiff and defendant No. 1. The plaintiff contended that previously property of the plaintiff and defendant No. 1 was acquired for Warana Project. Therefore, the suit property was allotted to the plaintiff and defendant No. 1. However, defendant No. 1 is working in Mumbai, hence the suit property is possessed by the Plaintiff. Further, possession panchnama is also standing in the name of the plaintiff. The plaintiff contended that since 1987 name of the plaintiff was recorded on 7/12 extract of the suit property. Furthermore, the suit property is yet to be parted between him and defendant No. 1. Despite that in collusion with revenue officer defendant No. 1 recorded his name on revenue record for area ad measuring 20R. Thereafter, defendant No. 1 falsely showed boundaries of the suit property and

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executed sale deed in favour of defendant No. 2. The plaintiff further contended that on 10.06.2023 he was working in the suit property at that time defendant No. 2 came there and threatened him for dire consequences. Further, defendant No. 2 tried to oust the plaintiff. Hence, the plaintiff filed present suit. The plaintiff contended that prima facie case in his favour, no injury cause to defendants if application is allowed and balance of convenience also lies in his favour. Hence, he filed present application.

03. Defendant No.2 appeared and resisted the claim of the plaintiff by filing his written statement at Exh. 16. He denied each and every contention of the plaintiff. He contended that suit of the plaintiff is not maintainable in present form. Further, the plaintiff undervalued the suit on that count also suit of the plaintiff is not tenable. Furthermore, the description of the suit property is not proper. He contends that the suit property was allotted to the plaintiff and defendant No. 1. However, being elder brother and defendant No. 1 is residing at Mumbai, hence possession was handed over to the plaintiff, but name of defendant No. 1 is recorded for area ad measuring 20R. Accordingly, the plaintiff and defendant No. 1 had their respective possession in their share. Further, as per application of defendant No. 1 revenue officers confirmed possession with defendant No. 1. Furthermore, defendant No. 1 was obtained sale permission from the Tahsildar. Accordingly, Class- 2 land converted into Class-1 as per Mutation Entry No. 24733. He contended that due to financial necessity defendant No. 1 wanted to sell the suit property. Therefore, he contacted to defendant No. 1. Accordingly, negotiation took place

between them. Accordingly, he purchased area ad measuring 20R by virtue of registered sale deed dated 23.05.2023, bearing No. 3836/2023. He contended that as per sale deed possession of area ad measuring 20R was handed over to him and he possessed the same. He contended that he purchased area ad measuring 20R for valuable consideration. Further, prior to sale deed he had issued paper notice on 17.05.2023 in daily news paper Sakal. However, no one took any objection to said notice. He contended that as per sale deed he became owner of area ad measuring 20R, hence the plaintiff is not concern with area purchased by him. He contended that he is working in police department, however in order to malicious his image the plaintiff filed present false suit. Hence, he prayed to reject the application with compensatory cost of Rs.50,000/-.

04. Heard Ld. Advocate for the plaintiff and defendant No. 2. The Ld. Advocate for the plaintiff argued in consonance with his application. He argued that as per panchnama possession was handed over to the plaintiff. Further, defendant No. 1 is residing at Mumbai. Hence, since beginning the plaintiff is in possession. Further, the suit property is yet to be parted between the plaintiff and defendant No. 1. In this situation, without partition by metes and bound defendant No. 1 recorded his name. Furthermore, the defendants in collusion with revenue officer made illegal pachnama. He vehemently argued that within short period and without notice to the plaintiff, the defendants created record. In support of his contention, he place his reliance on documents filed along with the list at Exh.3. As against this, Ld. Advocate for defendant No. 2 argued that he is bonafide purchaser.

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According to him, separate possession was prepared in respect of share of defendant No. 1. Accordingly, name of defendant No. 1 was recorded on area ad measuring with defendant No. 1. Moreover, prior to sale deed he issued paper notice in daily newspaper Sakal. He argued that instead of filing suit for partition the plaintiff filed present suit. Hence, the plaintiff is not entitled for injunction.

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

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

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

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

- R E A S O N S -

As to Point No. 1 :-

07. Point No. 1 is related to prima facie case. A word prima facie case is not defined in Code of Civil Procedure, 1908. However, in various judgments of Hon'ble Supreme Court it held that a word prima facie means a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. In short, prima facie case means possibility of success of the party. After perusal of the pleading of the plaintiff, it is specific case of the plaintiff that partition of the suit property is yet to be done. Despite that defendant No. 1 sold his share to defendant No. 2. On the other hand, defendant No. 2 contends that defendant No. 1 had possessed his separate share as per revenue record. Accordingly, he purchased share of defendant No. 1 for valuable consideration. Therefore, he is possessed area ad measuring 20R in Gat No. 26A.

08. In aforesaid backdrop, it is necessary to mention that present application is for interim injunction, the scope of the interim injunction is limited purpose. It is settled law that while considering the interim application, the court cannot finally adjudicate dispute between parties or adjudicate title of the parties. The court only concern with the prima facie case. Further, object of the interim injunction is to save the subject matter of the suit till final adjudication of the suit. In present suit, after considering the documents on record, it is admitted position that previous land of the plaintiff and defendant No. 1 was acquired by the government, therefore, the suit property was allotted to the plaintiff and defendant No. 1. However, it is specific

case of defendant No. 2 that defendant No. 1 had separate possession and same is hand over to him at the time of sale deed. Further, after perusal of 7/12 extract it appears that name of plaintiff No. 1 and defendant No. 1 is mutated thereon for area ad measuring 20R, respectively.

09. In suit for injunction, it needs to prima facie ascertain factum of possession. In present suit, it is specific contention of the plaintiff that he possessed the suit property. On the other hand, defendant No. 2 contended that defendant No. 1 was possessed of area ad measuring 20R separately. Rival contention of both the parties shows that they denied possession of each other. After perusal of document more particularly possession panchnama dated 30.09.1987 it manifests that initially possession of the suit property was handed over to the plaintiff. Further, after perusal of document annexed with sale deed, it shows that defendant No. 1 filed application before Collector, Kolhapur. Accordingly, possession of 20R land handed over to him as per possession panchnama dated 21.07.2022. It pertinent to note that possession was handed over to defendant No. 1 as per Order passed by Deputy Collector (Rehabilitation). Further, it is contention of the plaintiff that said authority failed to give notice to him. However, it is necessary to mention that the plaintiff did not challenge order passed by Collector before any appellate authority. If any irregularities committed by any authority the appellate authority has power to make comment upon it and to set aside the order. Furthermore, the plaintiff himself contended that the suit property is yet to be parted between him and defendant No. 1. In this situation, the plaintiff has ought to have filed suit for partition, but the plaintiff failed to file the same. The

documents on record prima facie shows that possession of area ad measuring 20R was handed over to defendant No. 1. Hence, it appears that defendant No. 1 was possessed area ad measuring 20R.

10. Considering the aforesaid discussion cumulatively, it appears that the plaintiff failed to prove prima facie case in his favour. Accordingly, I answer point No. 1 in Negative.

As to Point No. 2 and 3 :-

11. Point No. 2 and 3 are related to balance on convenience and irreparable loss. These two points are related to each other, hence in order to avoid repetition of discussion, I discuss them together.

12. According to settle principles of law, the applicant must be proved that balance of convenience lies in his favour and irreparable loss will cause to him if injunction is refused. It is contention of the plaintiff that defendant No. 2 is disturbed to his lawful possession in the suit property. In this situation, it is pertinent to note that it is not case of the plaintiff that he is owner of entire 40R. On the contrary, he contended that the suit property is received in lieu of acquisition of ancestral property. Further, it appears that defendant No. 1 sold his share only. Moreover, it is not case of the plaintiff that defendant No. 1 sold area more than his share. Therefore, balance of convenience is not lies in favour of the plaintiff and no irreparable loss will cause to the plaintiff. Accordingly, I answer point No. 2 and 3 in Negative.

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As to Point No. 4:-

13. Considering the aforesaid discussion, the plaintiff has no prima facie case in his favour, further, no irreparable loss will cause to him and balance of convenience also not lies in his favour. Therefore, the plaintiff is not entitled to injunctions as prayed. Accordingly, I passed the following order :

- O R D E R -

Application (Exh. 5) is rejected.

Date:- 27.09.2023

(S.D.Shirsat)

02nd Jt Civil Judge Jr.Dn.Pethvadgaon.