

Reg. Civil Suit No. 105/2017**Order below Exh. 5**

1] The plaintiffs have filed this application seeking temporary injunction to restrain the defendants from obstructing the possession of the plaintiffs over the suit property and from using the access to it.

2] It is the case of the plaintiffs that Raoso and Paygonda had purchased the suit property on 02/04/1993 by registered sale deed from defendant no. 1. Since then they had been in possession thereof. Thereafter by a register partition deed the same came in share of Raoso and plaintiff no. 3 and 4. Raoso died on 30/04/2016. Plaintiff no. 1 is his widow and plaintiff no. 2 and 5 are his children. This is how the plaintiffs are in possession of the suit property. In spite of the sale deed the defendants are obstructing the possession of the plaintiffs. They abused them and have threatened them from entering the suit property or using the common access to it. Hence, the application.

3] The defendants have filed their say at Exh. 12. They have denied the execution of the sale deed. According to them, it is the defendants who have been in possession thereof. According to them, the sale deed and entries in the land records are false and bogus. The son of defendant no. 1 who was also husband of defendant no. 2 is dead. The plaintiffs are taking undue advantage of the same and claiming their right over the suit property. Hence, they prayed to reject the application.

4] From the above contentions the following points arise for

my determination and I have recorded my findings thereon along with reasons below.

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the plaintiffs have a prima facie case ?	Yes
2	Whether the balance of convenience is in favour of the plaintiffs ?	Yes
3	Whether irreparable loss would be caused to the plaintiffs, if injunction is not granted in their favour ?	Yes
4	What order ?	As per final order

REASONS

As to point No. 1 to 4 :

5] According to the plaintiffs, Raoso and Paygonda had purchased the suit property on 02/04/1993 by registered sale deed from defendant no. 1. Since then they had been in possession thereof. Thereafter by a register partition deed the same came in share of Raoso and plaintiff no. 3 and 4. Raoso died on 30/04/2016. Plaintiff no. 1 is his widow and plaintiff no. 2 and 5 are his children. This is how the plaintiffs are in possession of the suit property. In spite of the sale deed the defendants are obstructing the possession of the plaintiffs. They abused them and have threatened them from entering the suit property or using the common access to it.

6] According to the defendants, it is the defendants who have been in possession thereof. According to them, the sale deed and entries in the land records are false and bogus. The son of

defendant no. 1 who was also husband of defendant no. 2 is dead. The plaintiffs are taking undue advantage of the same and claiming their right over the suit property.

7] The plaintiffs have filed a copy of the sale deed dated 02/04/1993 executed by defendant no. 1 in their favour. The said sale deed is a registered sale deed. It is clearly mentioned therein that the predecessors-in-title of the plaintiffs were put in possession of the suit property. It also speaks about the common way which defendant no. 1 has given through his remaining portion of the land. The 7/12 extract shows the names of plaintiffs in ownership and user column. The defendants have also filed 7/12 extract of the years 1991-1992 to 2011-2012. There is no mention of plaintiffs or their predecessors-in-title in it. However, no any explanation is offered by the defendants as to how their names disappeared from the land records. They are silent on the course of action adopted by them after knowledge of the sale deed and the mutation entries. Though they have come with a case that they came to know about it for the first time on receipt of suit summons, no any action is taken by them though considerable time has elapsed since receipt of the suit summons. They have filed photographs of open land allegedly showing their possession. Photographs of vacant land cannot be said to prove anybody's possession.

8] The plaintiffs have filed affidavits of plaintiff no. 2, Mahaveer, Rajmati, Sudarshan and Ajit in support of their application. Defendants have filed affidavits of Prakash, Balaso, in support of their say. Thus, there are two contradictory sets of affidavits on record. As a result it will be highly unsafe to rely on

them and other material needs to be looked into.

9] As stated earlier the 7/12 extract shows names of plaintiffs. The sale deed in their favour is registered and clearly speaks of a common way to access the suit property. They have filed copy of an application made by them to the police in respect of obstruction made by the defendants. The defendants on the contrary have not filed any document to show that the sale deed and the revenue entries are false and bogus. They have filed nothing to show that they are in possession of the suit property as on date.

10] For the aforesaid reasons, I hold that the plaintiffs have a prima facie case. The balance of convenience is in their favour and irreparable loss will be caused to the plaintiffs, if the application is not allowed.

In the result, I pass the following order.

ORDER

- 1] Application at Exh. 5 is allowed.
- 2] The defendants or anybody claiming through them are temporarily restrained from obstructing the possession of the plaintiffs over the suit property and use of the common access.
- 3] Parties to bear their own costs.

Sd/-
(Mahesh Sowani)
Jt. Civil Judge, Jr. Dn.,
Peth Vadgaon

Date : 20/12/2017

CERTIFICATE

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	Mrs. Rupali Sanjay Jadhav
Name of Court	Shri. M. R. Sowani, Jt. C.J.J.D. and J.M.F.C., Peth Vadgaon
Date of Dictation	20/12/17
Judgment/Order signed by the P.O. on	20/12/17
Judgment/Order uploaded on	21/12/17