

Reg.Civil Suit No.206/2016
(CNR No.MHKO11-001243-2016)

ORDER BELOW EXH.5

1. This application was filed by the plaintiffs under Order 39 Rule 1 and 2 r/w. Section 151 of The Code of Civil Procedure.

Suit properties –

- A)** Gat No. 517 admeasuring area 1 H 07 R, out of it agricultural land of 8 annas admeasuring area 0H 53 R which was owned and possessed by the plaintiffs having following four boundaries
- Towards East – Gat No.513 of Mahatma Gandhi Medical Trust
- Towards West – Gat No.516 (Referred in column B)
- Towards South – Remaining area in Gat No.517
- Towards North – Gat No.515
- B)** 2 annas common share out of Gat No.516 admeasuring area 0 H 64 R with the rights of water etc.
- (Agricultural lands referred in above column 1(A) and 1(B) are hereinafter referred as '**Suit properties**')

Plaintiff's case in short is as under -

2. The plaintiffs have submitted that, the suit properties were purchased by them and defendant No.2 from original owner Nanasaheb Ghatage vide registered Sale Deed No.4722/2006 dated 14/08/2006. Consent Deed No.4830/2006 dated 19/08/2006 was also executed with respect to the suit properties. Thereafter the suit properties came into the possession of the plaintiffs as owner and their names were entered on 7/12 extract of the suit properties as owner and possessor of the suit properties. The defendant No.1 has filed R.C.S.No.163/2015 and also

objected the peaceful possession of the plaintiffs over the suit properties by threatening them. The suit properties are not joint family properties of plaintiffs and defendants, therefore the question of partition does not arise with respect to the suit properties and hence the defendant No.1 to 4 have in collusion filed false R.C.S.No.163/2015 for partition. The defendant No.1 to 4 use to threaten and obstruct the peaceful possession of the plaintiffs over the suit properties. The plaintiffs are in possession of the suit properties for last 10 years, therefore by way of registered Sale Deed, the plaintiffs becomes the bonafide purchaser of the suit properties. Hence the plaintiffs submitted that, they have prima facie case, balance of convenience lies in their favour. In such circumstances if the defendants are not restricted from causing obstruction, irreparable loss caused to them. Hence they prayed to issue temporary injunction against the defendants.

3. The application is opposed by the defendant No.1 by filing say and written statement at **Exh.24**. He has denied all the contentions of the plaintiffs specifically. He submitted that, there is no partition as to the suit properties. The suit properties were in the name of Ramchandra Gundappa Aparadh. Since 1972 he is in the possession of the suit properties as a tenant. By way of agreement dated 29/05/1972 and 06/05/1975 executed between Nanasaheb Ghatage and Ramchandra Aparadh, the original owner - Nanasaheb Ghatage agreed to give the suit properties to Ramchandra Aparadh. Therefore the defendant No.1 to 4, deceased Savitribai Ramchandra Aparadh had instituted the suit R.C.S.No.121/2001 against Nanasaheb Ghatage for specific performance of contract, in which the plaintiff No.2 was Power of Attorney Holder. In the said R.C.S.No. 121/2001, then plaintiffs have also prayed for issuance of temporary injunction against Nanasaheb Ghatage for restraining him from causing obstruction to their possession and further alienation of suit properties. Ex-parte temporary injunction was allowed in the said suit.

The defendants are in possession of the suit properties. The defendant No.1 further submitted that, in the present suit, if the plaintiffs are already having ownership and possession of the suit properties by way of Sale Deed dated 14/02/2006, then they cannot again claim the declaration as to the ownership and possession of the suit properties.

4. During the pendency of R.C.S.No.121/2001, it was agreed between the defendants that, the properties can be purchased from the original owner - Nanasaheb Ghatage on 07/02/2006 and 15/04/2006. The consideration amount of Rs.6 lakhs was fixed. Accordingly the agreement was executed in the presence of witnesses and being Power of Attorney Holder, the plaintiff No.2 has signed the said agreement on behalf of defendants on 15/04/2006. However later on the R.C.S.No.121/2001 was compromised between the parties to the suit.

5. The defendant No.1 further submitted that, the suit properties are joint family properties which were purchased from the income of joint family properties. Therefore she prayed to reject the temporary injunction application.

6. The application is opposed by the defendant No.2 to 4 by filing say and written statement at **Exh.25** and denied all the contentions of the plaintiffs specifically. They submitted that, the defendant No.2 was looking after the business of their family as 'Karta'. As the suit properties are ancestral properties, there is no partition between the parties.

7. The defendants are taking various crops like soyabin, ground nuts, jwari, sugar cane etc. since 1972. Therefore they are having common possession over the suit properties. As there is no partition between the plaintiffs and defendants as to the suit properties, they are in common possession of it. Hence there is no documentary evidence to

show that, partition was effected between the parties. The plaintiffs are not having prima facie case, balance of convenience does not lies in their favour. If temporary injunction is granted against the defendants, the defendants will suffer irreparable loss, hence they prayed to reject the application.

8. Heard Ld. counsels for both sides at length. From the rival pleadings, following points arise for my determination and I have recorded my findings thereon for the reasons stated below.

Sr. No.	Points	Findings
1	Whether plaintiffs are having prima facie case ?	<i>In Affirmative</i>
2	Whether balance of convenience lies in favour of the plaintiffs ?	<i>In Affirmative</i>
3	Whether plaintiffs will suffer irreparable loss if injunction is not granted as prayed ?	<i>In Affirmative</i>
4	What order ?	<i>Application is Allowed with Costs.</i>

REASONS

ADMITTED FACTS

9. The relationship between the plaintiffs and defendants is admitted to each other. The execution of Sale Deed No.4722/2006 dated 14/08/2006 is also admitted. It is admitted fact to both parties that, R.C.S.No.121/2001 was filed by the plaintiffs and defendants against Nanasaheb Ghatage and same was compromised. It is admitted fact that, R.C.S.No.121/2001 was filed for specific performance of contract against Nanasaheb Ghatage and same was withdrawn as per pursis dated 28/04/2006.

AS TO POINT NO.1 TO 3 -

10. The point No.1 to 3 are co-related to each other, hence I have taken up them together for discussion. In the present case, both parties have claimed their possession over the suit properties. Both parties have filed numerous documents on record, which will be considered whenever it is necessary.

11. The plaintiffs have filed on record 7/12 extracts, mutation entries of suit properties, which shows that, the names of plaintiffs are entered on revenue records to the extent of their shares. The name of defendant No.2 also exists on the 7/12 extract on the basis of Sale Deed dated 14/08/2006 to the extent of his share. On perusal of xerox copy of the said Sale Deed it reveals that, the original owner Nanasaheb Ghatage has sold out the suit properties to the plaintiffs and defendant No.2 - Yashwant Aparadh by registered Sale Deed No.4722/2006 on 14/08/2006. As per the registered Sale Deed 4722/2006, the defendant No.2 – Yashwant was became the owner of ½ share and plaintiff No.1 and 2 became the owner of ½ share in the properties mentioned in the Sale Deed. Therefore accordingly prima facie it reveals that, names of plaintiff No.1 and 2 were entered on 7/12 extract of Gat No.516 to the extent of 1 annas share each. As per the 7/12 extract of Gat No.517, the plaintiffs names were entered to the extent of 4 annas each. The name of the defendant No.2 – Yashwant was entered on the revenue record of Gat No.516 to the extent of 2 annas and on revenue record of Gat No.517 to the extent of 8 annas.

12. On perusal of the Sale Deed and revenue entries, it prima facie reveals that, at the time of the execution of Sale Deed the actual possession was given to the plaintiffs and defendant No.2 to the extent of their share. The entire Sale Deed prima facie does not show that, the suit

properties were purchased from the income of joint family properties. The 7/12 extract filed on record prima facie shows that, the plaintiffs and defendant No.2 are owner and possessor of properties to the extent of their shares.

13. The plaintiffs have also filed the photographs on record which prima facie shows that, the suit properties are in their possession. The plaintiffs also filed computerized 8-A extract and 7/12 extract of suit properties alongwith **Exh.38**, which shows that, they are owner and possessor of the suit properties. The panchanama carried out by the Circle Officer Wathar tarf Vadgaon (वाठार तर्फ वडगांव) shows that, the plaintiffs have possession over the suit properties towards the Northern side of the suit properties. Though the defendants have challenged the said panchnama by filing R.T.S.Appeal before the Sub-Divisional Officer, Ichalkaanji, however the said appeal is still pending and not disposed off. Therefore the said panchanama is not cancelled by the appellate revenue authority and it is in existence. Moreover validity of the panchanama can be seen at the time of final adjudication of the suit.

14. The photographs filed alongwith **Exh.40** also shows that, the plaintiffs are cultivating the suit properties. The plaintiffs have also filed receipts at **Exh.40/5** issued by Shri. Tatyasaheb Kore Warana Sahakari Sakhar Karkhana Ltd. Warananagar to the present plaintiffs. They have also filed receipts at **Exh.40/6** issued by Jyotirling Hightech Sugar Cane Nursery, Electricity Bill receipts at **Exh.40/8**, receipts issued by Shri Warana Vibhag Sahakari Grahak Mandal Ltd. Warananagar at **Exh.40/10**, which shows that, the plaintiffs are cultivating the sugar cane crops in the suit properties and also obtained the drip irrigation facility in the suit properties. The letter issued by the Agricultural Department, Maharashtra State dated 20/01/2018 was also filed on record at **Exh.40/13**. The plaintiffs in support of their contentions have filed photographs of the

same on record at **Exh.40/15**, which categorically prima facie shows that, the plaintiffs have obtained the drip irrigation facility in the suit property.

15. There are no prima facie documents on record to show that, the suit properties were purchased from the income of joint family properties. The 7/12 extracts on record shows that, the plaintiffs are in possession of the suit properties since last 10 years. After execution of the Sale Deed No.4722/2006 dated 14/08/2006 till filing of the R.C.S.No.163/2005, the suit properties are in possession of the plaintiffs and for that purpose, the defendants have not raised any objection and also not challenged the alleged Sale Deed No.4722/2006 dated 14/08/2006. The documents on record prima facie shows that, the plaintiffs are in possession of the suit properties and taking the crops of sugar cane.

16. The defendants have relied upon *Shiv Ram Singh v/s. Smt. Mangara and others* [**AIR 1989 ALLAHABAD 164**], *Dr. Ashis Ranjan Das v/s. Rajendra Nath Mullick* [**AIR 1982 CALCUTTA 529**], *Narayana Mudali and others v/s. Peria Kalathi Mudali and others* [**A.I.R. 1939 Madras 494**], *Begg Dunlop and Company and another v/s. Satis Chandra Chatterjee* [**A.I.R. 1920 Calcutta 276**], *Kangabam Biramangol Singh v/s. Laimayum Ningol Aribam Ongbi Madhabi Devi and another* [**AIR 1962 MANIPUR 55 (V 49 C 18)**].

The facts of the above case laws and present case are totally different to each other, therefore I am not relying on them.

17. Considering the above reasons and documents on record, it prima facie shows that, R.C.S.No.163/2015 was filed by the present defendants against the plaintiffs for partition, possession and declaration. The defendants have claimed that, the suit properties are joint family

properties of them and ancestral one. Hence they have right in the suit properties. Admittedly there was suit i.e. R.C.S.No.121/2001 and same was withdrawn by the plaintiffs and defendants and there was compromise between the plaintiffs, defendants and original owner Nanasaheb Ghatage. The earlier suit i.e. R.C.S.No.121/2001, they filed for the specific performance of contract. It was not fully and finally decided on merits. Record shows that, the original owner Nanasaheb Ghatage has sold out the suit properties to the plaintiffs and defendant No.2 and the possession of the same was given to them at the time of execution of Sale Deed. Accordingly their names were entered on revenue records of the suit properties. The documents on record categorically shows that, the plaintiffs are in the possession of the suit properties. In such circumstances, balance of convenience lies in favour of the plaintiffs.

18. The defendants have filed interim injunction application at **Exh.33** and also claimed interim relief against the plaintiffs as to the whole Gat no. 516 and 517. However they have failed to prima facie show that, they are having common possession over the suit properties. They have claimed temporary injunction with respect to entire Gat No.516 area of 0 H 64 R and Gat No.517 are of 1 H 8 R, however the defendants have failed to prima facie show that, they have possession over entire properties of Gat No.516 and 517. In such circumstances, they have no prima facie case, balance of convenience does not lies in their favour.

19. In the present case the plaintiffs have proved that, they have prima facie case. Balance of convenience lies in their favour. As prima facie the plaintiffs are having possession over the suit property, they are entitled for temporary injunction against defendants for safeguard of their possession over the suit properties till the decision of the present suit. It is necessary to restrain the defendants from causing any

obstruction to the possession of the plaintiffs over the suit properties till the final disposal of the suit. If the temporary injunction is not granted against the defendants, the plaintiffs were suffer the irreparable loss. Hence I answer point No.1 to 3 in affirmative.

AS TO POINT NO.4 -

20. Considering the findings of point No. 1 to 3, the application deserves to be allowed. Hence I pass the following order -

ORDER

1. The application is hereby allowed with costs.
2. The defendants are hereby temporarily restrained from causing obstruction to the possession of the plaintiffs over the suit properties till the final disposal of the suit.

Sd/-
(J. S. Gaikwad)
Civil Judge Jr.Dn., Peth-Vadgaon

Date : 21/12/2018

I affirm that the contents of the P.D.F. file order are same, word to word, as per the original judgment.

Name of the Stenographer	Sou.K.S.Gaikwad
Name of the Court	Smt.J.S.Gaikwad, Civil Judge Junior Division, Peth-Vadgaon
Date of Dictation	21/12/2018
Judgment signed by the P.O. on	21/12/2018
Judgment uploaded on	21/12/2018