

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

ORDER BELOW EXH.33

1. The defendants No.1 to 3 have filed this application under Order 39 Rule 1 and 2 r/w. Section 151 of The Code of Civil Procedure.

As per application of defendants at **Exh.33** following properties are Suit properties –

- A) 4 Annas share in common property of Gat No.516 situated at Nave Pargaon, Tal. Hatkanangale, Dist. Kolhapur admeasuring area 0.64 R *Pot Kharaba* 0.02 R assessed at 6 Rs. 31 Paise
- B) Total area of Gat No.517 situated at Nave Pargaon, Tal. Hatkanangale, Dist. Kolhapur admeasuring area 1 H 08 R *Pot Kharaba* 13 R assessed at 6 Rs. 19 Paise

Defendants' contentions in short are as under -

2. The above said properties i.e. Gat No.516 and 517 situated at Nave Pargaon, Tal. Hatkanangale were in the possession of deceased - Ramchandra Aparadh as a tenant since 1972. On 06/05/1975 the original owner - Nanasaheb Ghatage agreed to sale the above said properties by accepting Rs.13,000/- towards consideration of the above said properties. The possession of the properties were given to Late Ramchadra Aparadh in the year 1972 and after his demise, all his legal heirs are in common possession of the abovesaid properties. The abovesaid properties are not partitioned by metes and bounds. The

agreement dated 14/08/2006 was executed for the convenience of joint family and same was executed in favor of defendant No.2 and plaintiffs. The said properties were purchased out of the income of joint family properties. The suit properties are joint family properties. However for the sake of convenience, the names of plaintiffs and defendant No.2 were entered on 7/12 extracts. They have cultivated the sugar cane crops in 70 R area of suit properties. The plaintiffs and defendants are having common possession over the suit properties. As there is no partition as to the suit properties, it is not determined which portion of Gat No.516 and 517 was allotted to plaintiffs and defendants. The plaintiffs have threatened the defendants on 11/06/2017, 07/10/2018 and 29/03/2018 and also threatened to take away the sugar cane crops standing in the suit properties. As the defendants are having common possession over the suit properties, they prayed to issue temporary injunction against the plaintiffs for restraining them from withdrawing the defendants from the Gat No.516 and 517. They also prayed to restrain the plaintiffs from cutting and disposing off the sugar cane crops.

3. The application is opposed by the plaintiffs by filing say at **Exh.45**. They have denied all the contentions of the defendants specifically. They have submitted that, they are having bonafide title over the suit properties. They are having ownership and possession over the suit properties. They are cultivating sugar cane crops in the suit properties. They have filed 7/12 extracts, mutation entries, photographs, panchanama on record, which shows their possession on the suit properties. They prayed that, the defendants are not having prima facie case, balance of convenience lies in favour of plaintiffs. If temporary injunction granted against them, they will suffer irreparable loss. Hence they prayed to reject the temporary injunction application.

4. 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.

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

REASONS

AS TO POINT NO.1 TO 3 -

5. 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 have considered at the stage whenever it will be necessary.

6. As it is already discussed in order below **Exh.5** that, 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 $\frac{1}{2}$ share and plaintiff No.1 and 2 became the owner of $\frac{1}{2}$ 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.

7. 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.

8. 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.

9. 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.

10. On the other hand, the defendants have filed the 7/12 extract of Gat No.516 and 517 on record, which also shows that, the names of plaintiffs and defendant No.2 are entered on the 7/12 extracts as owner and possessor of the properties in Gat No.516 and 517. They have also filed the photographs at **Exh.42/8 and 9** for showing that, the plaintiffs and their family members have threatened them. However this fact also can be proved at final adjudication of the suit.

11. On perusal of the documents on record, it prima facie shows that, by way of registered Sale Deed No.4722/2006 dated 14/08/2006, the plaintiffs and defendant No.2 have purchased the suit properties. 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.

12. 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 7/12 extracts 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.

13. The defendants 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. Hence I answer point No.1 to 3 in negative.

AS TO POINT NO.4 -

14. Considering the findings of point No. 1 to 3, the application deserves to be rejected with costs. Hence I pass the following order -

ORDER

The application is hereby rejected with costs.

Date : 21/12/2018

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

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