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Regular Civil Suit No.32/2015
CNR No.MHKO12-000145-2015
Order Below Exh.69

ORDER BELOW EXH.69

This application is filed under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908, in which the plaintiff prayed for grant of temporary injunction restraining defendants from causing obstruction to the suit property.

2) Description of the suit property :-

The following landed property situated at village Patgaon, Tal. Bhudargad, Dist.Kolhapur,

Sr. Nos.	Gat No.	Area H. R.	Assessed at Rs.Ps.	Out of area H. R.
1]	152/ A	6-22.6	04=78	0.07.4

are the subject matter of this suit. (Hereinafter referred to as "the suit property" for the sake of brevity).

3) Shortly stated the case of the plaintiff is that.

It is averred that the original Gat No.152 has been wrongly split-up by the defendant no.6 with the help of revenue authority. Thereafter, Gat No.152 is divided into two parts i.e. Gat No.152/A (which is suit property) and Gat No.152/B.

4) The alleged split-up of Gat No.152 is made by mother of the defendant no.6. It is averred that she is not entitled to do so, as rights relating to the heirship is only decided by the Civil Court.

5) It is averred that Gat No.152 is originally self-acquired property of one Shankar Bala Shetty. He purchased the same in Government auction. Accordingly, the receipts of auction is also produced on record. Since 1967 to 1988, deceased Shankar Shetty is the owner, possessor of Gat No.152, thereafter deceased Shankar Shetty bequeathed the Gat No.152 in favour of the plaintiff and defendant nos.1 to 5. When the said fact is came to know to the defendant no.6, at that time, they entered into the suit property and abused the plaintiff in filthy language and thereby obstructed to the possession of the plaintiff over the suit property. It is further averred that the plaintiff and defendant nos.1 to 5 are the owner and possessor of the suit property. Defendant no.6 has no concern with the suit property. Hence, the application.

6) The defendant no.6 denied the contentions in the application in toto. He contended that already interim relief has been prayed by the plaintiff and the same is allowed by the Court. Hence, he is not entitled to file present application. Moreover, they denied the alleged Will Deed. It is also

contended that the suit property is not in the possession of the plaintiff and Gat No.152/B is not the subject-matter of the suit. Hence, plaintiff is not entitled for the injunction as prayed.

7) I have heard the learned advocates for the respective parties at length.

8) Considering the rival contentions between the parties and on hearing the learned advocate for the respective parties, the following points arise for my determination and I have recorded my findings thereon with reasons stated below.

<u>Points</u>	<u>Findings</u>
1] Whether the plaintiff has made out prima-facie case ?	: Yes.
2] Whether the balance of convenience lie in favour of the plaintiff ?	: Yes.
3] Whether irreparable loss would be caused to the plaintiff, if the injunction as prayed is not granted ?	: Yes.
4] What order ?	: The application is allowed.

:: REASONS ::

AS TO POINT NOS.1 TO 4 :-

9) The plaintiff has relied on 7/12 extract of land Gat No.152/B at Exh.6 ; 7/12 extract of the suit property bearing land Gat No.152/A at Exh.7 ; M.E. No.904, 934, 1037, 1091, 151 at Exh. 8 to 12 respectively, 7/12 extract of Gat No.152 at Exh.41. The plaintiff also filed the affidavit of witness Laxman Atmaram Devali.

10) Besides, in the *catena* of the judgments by the Hon'ble Apex Court and the Hon'ble High Courts, certain guidelines have been evolved before issuing temporary mandatory injunction, which are (i) the plaintiff has strong *prima facie* case for trial, i.e. it shall be of a higher standard than a *prima facie* case that is normally required for a prohibitory injunction, (ii) it is necessary to prevent irreparable or serious injury which normally can not be compensated in terms of money and (iii) the balance of convenience is in favour of one seeking such relief.

11) Thus, considering the aforesaid aspect, the instant application is required to be considered to know whether plaintiffs have made out such a strong *prima facie* case for issuance of temporary mandatory injunction as prayed for. Because, the *prima facie* case is the *sine qua non* for the issuance of the temporary injunction under

Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908.

12) It is specific contention of the advocate for defendants that already temporary injunction application was decided, therefore, the present application is not maintainable. I perused the record of the case. Upon perusal of the record of the case, it appears that already the temporary injunction application is filed by the plaintiff in respect of whole Gat No.152 by praying not to create third party interest and not to disturb the possession of the plaintiff. However, the said application is partly allowed by my learned Predecessor only in respect of prayer of not to create third party interest. However, the said application is rejected on the ground that the plaintiff failed to prove his prima-facie possession over whole Gat No.152. Thereafter, the plaintiff amended the plaint and he added para no.1-A regarding to the division of Gat No.152 into two parts i.e. Gat Nos.152-A and 152-B and on 27/07/2017, the plaintiff filed the present application regarding to the Gat No.152-A i.e. the suit property of the present application, on the ground that on 02/04/2017, defendants threatened and obstructed to the possession of the plaintiff over the suit property i.e. Gat No.152-A. Prima-facie, the facts of the present application is different to that of earlier application for temporary injunction and the same is based upon the subsequent event.

Therefore, prima-facie, I found no substance in the contentions that the present application is not maintainable.

13) On perusal of village extract no.12 of the year 1950-51 at Exh.39 and the 7/12 extract of the year 1959-60 to 1984-85 at Exh.40 and 41, it appears that the name of Shankar Bala Shetty was recorded in the revenue record as owner and possessor of the suit property till the year 1985. This fact also supports the contentions of the plaintiff that the Gat No.152 is the self acquired property of Shankar Bala Shetty.

14) Now upon perusal of 7/12 extracts of the suit property, prima-facie name of the plaintiff and defendant nos.1 to 5 appeared in the cultivation column. Also, upon perusal of M.E. No.1151, by virtue of which, name of the plaintiff was recorded, it appears that name of the plaintiff and defendant nos.1 to 5 were recorded as a legal heirs of deceased Shankar Bala Shetty. Apparently, defendant nos.1 to 5, by filing their say also admitted the claim of the plaintiff. Hence, they are supportive to the plaintiff. Therefore, prima-facie, it appears that the plaintiff and defendant nos.1 to 5 are in possession of the suit property and the said fact is not expressly denied by the defendant no.6.

15) As per the averments of the application, which is

supported by the witness, it prima-facie appears that defendant no.6 is causing obstruction to the possession of the plaintiff over the suit property.

16) Therefore, I am of the view that the plaintiff on the basis of averments in his application, which is supported by his affidavit and documents on record has made out prima facie case. The balance of convenience weighs in favour of the plaintiff and he will suffer irreparable loss, if the injunction is refused. Thus, this is a fit case for exercising the discretion of granting relief of temporary injunction in favour of the plaintiff. Hence, this application deserves to be allowed. Thus, the points are answered accordingly. In result, the following order is passed,

ORDER

- 1] Application is allowed.
- 2] The defendant no.6 or his agents are hereby temporarily restrained from causing obstruction to the possession of the plaintiff over the suit property i.e. Gat No.152-A till the disposal of the suit.

Sd/-

(A. S. Koshti)

Civil Judge Junior Division,
Gargoti.

Place : Gargoti.
Date : 26/10/2018.

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

Name of the Stenographer	:	Mr. S. D. Sarang
Name of Court	:	Court of Civil Judge Junior Division, Gargoti, Tah. - Bhudargad, District - Kolhapur
Date of Dictation	:	26/10/2018
Order signed by the P.O. on	:	26/10/2018
Order uploaded on	:	26/10/2018