



R.C.S.No. 12/2021

Kishor R. Tawade Vs. Sandeep A. Kesarkar

CNR - MHKO130000552021

ORDER PASSED BELOW EXH.05

(Dt. 22/09/2021)

1. This is the application of interim injunction submitted by the plaintiff under Order 39 Rule 1 and 2 of the Code of Civil Procedure with request to restrain the defendants from causing obstruction and interference in the peaceful possession of the plaintiff over the suit property and not to oust the plaintiff from the suit property.

Brief facts of the plaintiff case are as under:-

2. The following properties are hereinafter will be referred as “the suit properties”.

Sr. No.	Village	R.S.No.	Total Area	Out of that property Area
1(A).	Kasaba Kagal, Tal. Kagal	273/17	1 H. 13 R.	0 H. 33 R.
1(B).	Kasaba Kagal, Tal. Kagal	273/17	1 H. 13 R.	0 H. 40 R.
1(C).	Kasaba Kagal, Tal. Kagal	273/20	0 H. 19 R.	0 H. 19 R.

3. It is the case of the plaintiff that, defendants No. 1 to 3 are son of defendants No. 4 and 5. Suit property no. 1(A) was belonged to defendants no 1 and 2 and the same was alienated by defendant no 4 as a natural guardian of them by way of registered sale deed bearing No. 382/2009 dated 07/03/2009 for consideration of Rs. 5,00,000/-. The same property was alienated for the education purpose of the defendant No. 1 and 2. Again suit property No. 1(B) was alienated by defendant No. 3 and his sister Megha by way of

registered sale deed No. 383/2009 dated 07/03/2009 for consideration of Rs. 6,00,000/- and suit property No. 1(C) was alienated by defendant No. 4 and Geeta Dilip Sankpal by way of registered sale deed No. 1257/2007 dated 19/07/2007 for consideration of Rs. 5,00,000/-.

4. It is case of the plaintiff that, since execution of the sale deed the suit properties are in possession of the plaintiff. The plaintiff is taking various crops in the said property. In such circumstances, the defendants with collusion of each other have filed another Regular Civil Suit No. 40/2020 in respect of sale deed No. 382/2009. It is pleaded that, the defendants have no right to challenge that sale deed, as the same is not challenged by the defendants No. 1 and 2 within limitation, after attaining their majority. The defendants on 07/01/2021 have obstructed the plaintiff, when the plaintiff was in suit property No. 1(A) and therefore, to restrain the defendants about their conduct, the instant application is filed.

Brief case of defendants No. 1 and 2 is as under:-

5. Defendants No. 1 and 2 have submitted their say at Exh.15 and contended that, the suit properties are in the possession of the defendants. Possession of the suit properties was never transferred to the plaintiff. Furthermore, the defendants are taking various crops including the crop of sugar cane in the suit property. It is recently revealed to the defendants that, the property belonging to their share was alienated to the plaintiff by way of registered sale deed No. 382/2009. It is further revealed to them that, the said sale deed was executed by their mother. However, the mother i.e. defendant No. 4 expressed her inability i.e. unawareness about the execution of the same sale deed. The defendants in that respect

when approached to the plaintiff, at that time the plaintiff has executed one agreement on 17/10/2019. However, the recitals in that agreement are ambiguous.

6. As per the defendants, Education of the defendants is completed in the Nagar parishad school. Therefore, there was no need to alienate the suit property for educational purpose. The said property in fact was never transferred for the benefit of defendants. Thus, by submitting all these contentions, the defendants have prayed to reject the application.

Brief case of Defendants No. 3 to 5 are as under:-

7. Defendants No. 3 to 5 have filed their say at Exh. 16. They also have contended that, possession of the suit property was never handed over to the plaintiff. The defendants are in possession of the suit property. In fact, the sale deeds in dispute are executed as security for the hand loan amount.

8. The defendants have further contended that, defendant No. 5 was director in Gahininath Nagari Sahakari Patsanstha and Diliprao Sangar Nagari Sahakari Patsanstha. However, liquidators were appointed on both these financial institution in respect of the loan transaction. The suit properties were mortgaged in the name of depositors of the financial institution. That transaction was taken place in the year-2004. In the year-2007, the defendants were in need of money for re-conveyancing the said properties which were already mortgaged in the name of depositors. At that time, the plaintiff has helped the defendants by giving them money of Rs. 5,00,000/-. The sale deed in respect of suit property No. 1(A) and 1(B) were executed when the defendants were minor. The agreement dated 17/10/2009 was falsely executed by the plaintiff by misguiding the defendants. The plaintiff has failed to prove his

possession over the suit property. Hence, the defendants have prayed to reject the application.

9. Heard Ld. Advocate Shri. S.S.Kestikar for the plaintiff and Ld. Advocate Shri. A.J.Desai for the defendants.

10. In view of rival submissions from both sides, following points are arise for my determination and my findings with respect to each of the point is as under-

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaintiff has made out prima facie case?	In the Affirmative.
2.	Whether balance of convenience lies in favour of the plaintiff?	In the affirmative.
3.	Whether irreparable loss will be caused to the plaintiff, if remedy of temporary injunction is refused?	In the affirmative.
4.	What order?	As per final order.

:- REASONING :-

As to Points No. 1 to 3 :-

11. Points no 1 to 3 are interrelated with each other, thus, to avoid repetition of facts they are discussed together.

12. It is specific case of the plaintiff that, the suit properties are purchased by him by way of registered sale deeds. The copies of those registered sale deeds are on record. Perusal of the same it prima- facie appears that, property at Sr. No. 1(A) is transferred in the name of plaintiff by way of registered sale deed No. 382/2009 dated 07/03/2009 for the consideration of Rs. 5,00,000/-, property at Sr. No. 1(B) is transferred in the name of plaintiff by way of registered sale deed No. 383/2009 dated 07/03/2009 for the

consideration of Rs. 6,00,000/- and property at Sr. No. 1(C) was transferred in the name of plaintiff by way of registered sale deed No 1257/2007 dated 19/07/2007 for the consideration of Rs. 5,00,000/-. Perusal of those sale deeds prima facie it appears that those sale deeds are duly executed. It is argued by the defendants that, even though the sale deeds are executed, they are merely executed for the security for the loan amount. However, reason behind the sale deed will be the part of merit and will be decided at final stage of the suit.

13. Both the parties are claiming their respective possession over the suit properties and they have filed bunch of documents on record to support and show their possession. Perusal of those documents it appears that, 7/12 extracts of properties No. 1(A) to 1(C) are on record which prima facie shows that, name of the plaintiff is entered to the revenue record of those properties. Indeed, in respect of the entry pertaining to property 1(A), the defendants advocate has brought attention of this Court to the copy of mutation entry No. 15604 to show that same mutation entry is cancelled. However, in my view, even though, the same mutation entry is cancelled, sale deed is still in existence and is not cancelled by any competent Court.

14. The plaintiff advocate during their argument have submitted that, in those three sale deeds it is clearly mentioned that, possession of the suit property is handed over to the plaintiff. However, defendants advocate during their argument have denied the same. The recitals of those sale deeds prima facie denotes that, possession is handed over to the plaintiff. The defendants advocate vide Exh. 18 and 21 has filed on record certain documents to denote that, the defendants have paid water charges of the suit property.

However, water charges receipt is in the name of Ashok Vitthal Kesarkar who is defendant No. 5 in the instant suit. Furthermore, 7/12 extract of the suit property No. 273/2017 denotes the separate property in the name of Ashok kesarkar . Therefore, it is not clear at this stage whether the receipt is in respect of suit property or not. Again, the defendants have filed one letter from Shahu Sakhar Upasa Jalsinchan to denote that amount for water charge is due from the survey No. 273/2017. However, as mentioned earlier separate property is standing in the name of Ashok Vitthal Kesarkar in that survey number. Hence, it can not be said at this stage that, the letter given by that society is in relation with the suit property. The defendants have further filed on record copy of account extract of saving account of Sunita Kesarkar to denote that, amount was credited to her account from Vyakateshwara Sakhar Karkhana for sugarcane bill from the suit property. However, separate property is there to the 7/12 extract of the suit property in the name of Sunita Kesarkar. Therefore, at this stage it can not be said that, those receipts are related with the sugarcane which is produced from the suit property.

15. The plaintiff in their support of possession have filed on record, one agreement dated 16/10/2019 which was executed in between Ashok Vitthal Kesarkar, Sunita Kesarkar, Suhas Kesarkar and Ashutosh Kesarka i.e defendants in this suit and in between the plaintiff. That agreement prima facie denotes that, the same was executed in relations with “the road that was proposed to be created in survey No. 273/2017 i.e. suit property”. Since the agreement was executed with the plaintiff it prima facie implies possession of the plaintiff over the suit property, because had if the plaintiff was not in possession of the suit property, then there was no need to execute the current agreement with the plaintiff. Even though, the

defendants have filed affidavit of Sagar Kesarkar in support of their case of possession, his affidavit is silent about the exact number of suit property. Hence, the same is not reliable.

16. The plaintiff advocate in support of their case have filed on record citation delivered in **Govind Anant Goltekar and Ors. V/S. Dasharath Deoba Goltekar reported AIR 2006 Bom. 174** in which it was held that, the registered sale deeds carries presumption of genuineness and the burden that, it is not genuine is on the person who alleges it is not. No doubt, the same principle is taken into consideration by this court while deciding the current application.

17. The plaintiff again has filed on record, the citation delivered by Hon'ble Supreme Court of India in **Murugan & Ors. Vs. Kesava Gounder and Ors.**, delivered in Civil Appeal No. 1782/2019. This citation speaks about the difference between void and voidable sale deed. It is clearly mentioned in it that, the sale deed executed in violation of section 8(2) of the Hindu Minority and Guardianship Act is voidable and it needs to be set aside. The defendants seem to have challenged the disputed sale deed in another suit bearing registration RCS No. 40/2020. However, the same suit is pending.

18. The plaintiff again has filed on record a judgment delivered in **Shamrao Ganpat Chintamani Vs. Kakasaheb Laxman Gorde, reported in 2008(2) ALL MR 118**, wherein in the Hon'ble High Court has discussed about basic principles while deciding the interim injunction. No doubt, the same are taken into consideration by this Court while deciding the present application.

19. To counter these citations, the defendants have filed on record three citations, which are as follows-

1) Kaliaperumal Vs. Rajagopal and another, reported in (2009)

AIR (SC) 2122:- The said citation is in respect that, when the recitals in the deed are insufficient or ambiguous, surrounding circumstances and conduct of parties can be looked upon for ascertaining intention of the parties. However, in my view recitals in the current and disputed sale deeds are prima facie not appears to be ambiguous. Hence, the same citation is not applicable here.

2) Agriculture Produce Market Committee, Gondal and others Vs. Girdharbhai Ramjibhai Chhanaiyara and others, reported in 1997 AIR(SC) 2674:- However, facts in that citation and in the present application are different. The current citation deals with concluded rights of the parties and enforcement in respect of the same, no case as such is there in the present application. Hence the same citation is not applicable here.

3) Baban Anantrao Naik Vs. Sau. Pramila Uttamrao Yenare & Anr. reported in 2011(6) ALL MR 15:- which deals with factum of possession at the time of deciding interim injunction application. No doubt, it is settled principle of law and hence, the same is taken into consideration by this Court while deciding the present application.

20. Thus, in such facts and circumstances, I am of the view that, the plaintiff has established his prima facie possession over the suit property. Hence, he has prima facie case, if injunction is not granted to him, he will suffer to irreparable loss. Hence, balance of convenience lies in his favour. Thus, on the basis of above factual aspects, I answer points No. 1 to 3 in the affirmative.

As to point No. 4:-

21. As points No. 1 to 3 are answered in the affirmative. The application is liable to allowed. Thus, in answer to point No. 4, following order is passed-

ORDER

1. The application (Exh.5) is allowed.
2. The defendants or any agent on behalf of them are temporarily restrained from causing any obstruction or interference in any form in the possession of the plaintiff over the suit property till final disposal of this suit.
3. Cost in cause.

Kagal.
Date: 22/09/2021.

Sd/-
(A. B. Jawale)
Civil Judge Junior Division,
Kagal.