

MHKO130000702021

R.C.S.No. 16/2021



Mumtajbi Naikwadi Vs. Yashwant Patil

ORDER PASSED BELOW EXH.05
(Dt. 20/04/2022)

1. The current application is filed by the plaintiffs under Order 39 Rule 1 and 2 of the Code of Civil Procedure with request to restrain defendant from causing obstruction and interference in the peaceful possession and occupancy of the plaintiff in suit property 1-B i.e. bylane (बोळ) Situated in C.S.No.2548.

Brief facts of the plaintiff case is as under:-

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

Sr. No.	Village	City Survey No.	Total Area
1(a)	Kasaba Kagal, Tal. Kagal, Dist. Kolhapur	2549	73.3 Sq.mtr.
1(b)	Kasaba Kagal, Tal. Kagal, Dist. Kolhapur	2548	6.4 Sq.mtr.

3. At property no 1 (a) C.S.No.2549, area 73.3 sqm out of that property, admeasuring 52.75 sqm and at property 1-b in C.S.No.2548, property admeasuring area 6.4 sqm i.e the property of bylane (बोळ) is the more specific suit property.

4. As per the plaintiff, suit property at 1-a was originally belonging to the Mahadu Rama Teli. After his death, the property was inherited by his heirs. The plaintiff on 13.12.1991 by way of registered sale deed no 1873 has purchased eastern side suit

property from heirs of Mhadu Teli admeasuring 36.65 sqm. Thereafter, the person by name Mangal Vijay Patil has purchased the remaining western side portion in said survey number 2549 from Shankar Mahadev Teli who was the heir of Mahadu Rama Teli by way of Registered sale deed No.1471 dated 14/08/1991. Out of that property the plaintiff has purchased property admeasuring 16.10 sqm, from Mangal Patil by way of registered sale deed No.355 dated 19.03.2003. Thus, in all, the plaintiff becomes owner of property admeasuring 52.75 sqm in suit property at 1-a i.e C.S.No.2549.

5. As per the plaintiff, the property in C.S.No.2548 i.e the property of common by-lane (बोळ) is in the possession and occupancy of plaintiff and defendant. water pipe connections of the both the parties are taken from this by-lane. The property in C.S.No.2547 was originally belonging to Parubai Maruti Powar. After her death, the property was come to the share of defendant by way of Registered Gift Deed No.467 dated 07.05.1980. As per the plaintiff, the defendant is not concerned with suit property at 1-b however, the defendant by mingling his hand with city survey officers has falsely entered his name to the city survey extract of suit property at 1-b i.e C.S.No.2548. The plaintiff has causing obstruction and interference in the possession and occupancy of the plaintiff in the suit property No.1-a and 1-b. Therefore, to restrain the defendant current application is filed.

Brief case of the defendant is as under:-

6. This application is objected by the defendant by submitting his say at Exh.11. As per the defendant, the plaintiff has no right in the C.S.No.2548. The suit property bearing C.S.No.2548 is inherited by the defendant from Parubai, as there are no direct

heirs to the Parubai. The property at C.S.No.2547 is gifted by Parubai to the current defendant, therefore defendant is owner of the same. Parubai has died on 09.01.1984. Therefore, as per her half share in the C.S.No.2548, the defendant has become owner and possessor of the same. The defendant has denied factum of mingling hands with the city survey officers.

7. As per defendant, out of suit property C.S.No.2549, the plaintiff has only owner and possessor of property admeasuring 52.75 sqm. The plaintiff has no right in the suit property at 1-b. Document on record denotes common ownership and possession of Mahadu Teli and Parubai Powar over the suit property at 1-b. It is alleged that the plaintiff has tried to construct windows in her house at C.S.No.2549 at suit property 1-a, which were opening towards C.S.No.2548 i.e suit property 1-b. However, as the same action of plaintiff was illegal, the plaintiff was restrained by Kagal Municipal Council by their notice dated 16.02.2016. The Kagal Municipal Council has closed the windows that were illegally opened by the plaintiff in C.S.No.2549. These things are hidden by the plaintiff in the plaint. The plaintiff is intentionally trying to do something, so as to denote her ownership and occupancy in suit property 1-b. The plaintiff and defendants are both having their main entry towards southern side of their property i.e towards the main road. Therefore, the plaintiff is having no concern and has no right in the C.S.No.2548, Thus, with all these contentions, the defendant has prayed to reject the application.

8. Heard Ld. Advocate Shri. K.D.Jadhav for the plaintiff and Ld. Advocate Shri. S.S.Kestikar for the defendant.

9. 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 plaintiffs have made out prima facie case?	In the Negative.
2.	Whether balance of convenience lies in favour of the plaintiff?	In the Negative.
3.	Whether irreparable loss will be caused to the plaintiff if remedy of temporary injunction is refused?	In the Negative.
4.	What order?	As per final order.

-: REASONING :-

As to Points No. 1 to 3 :-

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

11. Perusal of rival pleadings of both the parties, one thing is clear that both the parties are adjacent to each other. Dispute is pertaining to only suit property at Sr.No.1-b i.e property of by-lane (बोळ) bearing C.S.No.2548. Now both the parties are claiming their respective rights over the suit property at 1-b. Indeed, as the plaintiff has approached to the court, she has to establish her prima facie case. The document on record demonstrates that, the plaintiff has purchased property admeasuring 36. 65 sqm from heirs of Mahadu Rama Teli by way of registered sale deed. The defendant has not disputed the said fact. Furthermore, the plaintiff has again purchased property admeasuring 16.10 sqm from Mangal Patil who is owner of 36.65sqm, by way of registered sale deed. Mangal Patil had

purchased that property from Shankar Patil who was heir of Mahadu Teli. The defendant has also not disputed the said fact. What it appears is that at the moment there are two owners in C.S.No.2549 i.e suit property at 1-a, the plaintiff for area admeasuring 52.75 sqm and Mangal Patil for rest of the property. It means there are two owners in C.S No 2549.

12. Now the plaintiff is claiming her ownership and occupancy over the suit property at 1-b. The defendant has denied ownership and occupancy of the plaintiff in suit property 1-b. Sale deed of the plaintiff is on record which clearly shows that, the property in C.S.No.2549 is purchased by the plaintiff from different sellers i.e from heirs of Mahadu Teli and from Mangal Patil. The sale deed executed from the heirs of Mhadu Teli is silent about ownership of the plaintiff in suit property at 1-b. It is nowhere mentioned in the said sale deed that the rights in suit property at C.S.No.2548 i.e 1-b are transferred in the name of the plaintiff. Neither in the sale deed executed in between plaintiff and Mangal patil, there is reference about the same.

13. The plaintiff is relying upon a document of chalta number 264, wherein it is mentioned that Parubai Powar and Mahadu Teli was having their common possession and occupancy in the said C.S.No.2548. However, it is pertinent to note that the chalta number was sanctioned on 20/03/1971. Sale deed in favour of the plaintiff was executed on 13/12/1991. Thus, as the alleged chalta number was sanctioned prior to the execution of sale deed in favour of the plaintiff the fact of ownership and possession in C.S No 2548 being it is separate property should have to be mentioned in that sale deed. Apart from that what is important is that, the current suit itself is filed for declaration of ownership of the plaintiff over suit property

1-b.

14. It appears that the plaintiff is seeking relief in respect of both the suit properties. It is alleged that the plaintiff by constructing in suit property 1-a is trying to create her rights in suit property 1-b. The document submitted by the defendant vide Exh.12 denotes the notice issued by Kagal Municipal Council to the plaintiff directing her to stop her construction in C.S.No.2549 opening towards the eastern side i.e in C.S.No.2548. That notice was issued on 16.02.2016. Apart from that, the plaint is silent about the fact that what kind of obstruction the defendant is causing in suit property at C.S.No.2549. Thus, due to these facts, the plaintiff will also not be entitled to obtain any relief in respect of suit property 1-a.

15. At the moment it is not clear, whether any right in respect of common possession and occupancy was transferred by the heirs of Mahadu Teli in favour of the plaintiff or not. The said fact will be decided on merit and at the final stage of the suit. Thus, on the back drop of these factual aspects, I come to the conclusion that, the plaintiff has not established her prima facie case, balance of convenience does not lie in her favour, hence, if the remedy of injunction is refused, no loss will be caused to the plaintiff. Resultantly, I answer points no. 1 to 3 in the negatives.

As to Point No. 4:-

16. As point no. 1 to 3 are answered in the negative. The application is liable to be rejected. Hence, in answer to point no. 4, following order is passed-

ORDER

1. The application (Exh.5) is rejected.
2. In the peculiar facts and circumstances, there is no order as to cost.

Kagal.
Date: 20/04/2022.

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

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Issues.

1. Does the plaintiff has proved her common occupancy and possession over suit property 1-B?
2. Does the plaintiff has proved obstruction and interference in her possession over the suit property at 1-B ?
3. Whether the plaintiff is entitled for the relief of declaration as prayed for ?
4. Whether the plaintiff is entitled for the relief of perpetual injunction as prayed for?
5. What order and decree ?

Kagal.
Date: 20/04/2022.

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

