

**R.C.S.No. 20/2022**

Nitin Damakale/Sangar Vs. Shivaji @ Sarjerao Godhade

CNR - MHKO130001922022**ORDER PASSED BELOW EXH.05****(Dt. 31/07/2023)**

1. This application is filed by the plaintiffs' against defendant no. 1 to 7, under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure (in short 'CPC').
2. According to the plaintiffs', property Gat No. 365 admeasuring area of 1 H. 22.10 R., Pot kharab 0 H. 08 R. out of it 0 H. 65 R. agricultural land of plaintiff situated at Mouje Chimgaon, Tal. Kagal, Dist. Kolhapur and well described with boundaries in the plaint is subject matter of suit. (Hereinafter referred as "suit property".) The gist of application is to restrain the defendants from causing obstruction to the peaceful possession of plaintiffs upon suit property.
3. Defendant no. 1 to 7 have filed their W.S./say at Exh.15 by denying the contents of Exh.5.
4. To avoid repetition of facts, brief facts of application and written say are referred in the argument of learned advocates of respective parties.
5. Heard Shri. K.D.Jadhav learned advocate appearing on behalf of plaintiffs' and Shri. S.M.Savardekar learned advocate appearing on behalf of defendant no. 1 to 7. From the pleading and arguments of learned Advocates of parties with documents on record,

following points arise for determination, and this Court, recorded the reasons with finding as stated below :-

	<u>POINTS</u>		<u>FINDINGS</u>
1.	Whether prima facie case lies in favour of plaintiffs' ?	:-	No.
2.	Whether balance of convenience lies in favour of plaintiffs' ?	:-	No.
3.	Whether plaintiffs' would suffer irreparable loss if injunction is refused ?	:-	No.
4.	What order?	:-	Injunction Rejected.

:- DOCUMENTS :-

6. The plaintiffs' relied on following documents filed at Exh.3 & 27.

1.	Certified copy of 7/12 extract of Gat no. 365 situated at Mouje Chimgaon, Tal. Kagal dated 25/01/2022.
2.	Certified copy of diary extract of mutation entry no. 2199 dated 15/12/2021.
3.	Certified copy of order in R.C.S.No. 163/2001 dated 25/09/2013.
4.	Photo copy of agreement executed between plaintiff and defendant no. 1 on 15/02/2006.
5.	Photo copy of agreement executed between plaintiff and defendant no. 2 on 10/03/2006.
6.	Original copy of complaint lodged by plaintiff no. 1 against defendants before Murgud Police Station dated 16/01/2022.
7.	Certified copy of 7/12 extract of Gat no. 339 situated at Mouje Chimgaon, Tal. Kagal dated 09/08/2022.
8.	Certified copy of 7/12 extract of Gat no. 300 situated at Mouje Chimgaon, Tal. Kagal dated 09/08/2022.

9.	Original copy of agreement executed between plaintiff no. 1 & 2 and Sandip Bajirao Bharmal dated 20/12/2021.
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7. The plaintiffs' have filed on record affidavits of witnesses Bajirao Bapu Mendake and Sandip Bajirao Bharmal at Exh. 28 & 29.

8. The defendant no. 1 and 2 and other defendants have relied on following documents filed at Exh. 17, 19 & 31 which includes original agreement to sale papers, sugarcane register certificates & weight receipts of different sugar factory, order in Revision application no. 03/2021, sugar factory documents, photographs etc.

9. Learned advocate for the defendant no. 1 to 7 has filed affidavits of witnesses Pravin Pandurang Bharmal, Tanaji Dinkar Bharmal, Satappa Masu Kapase, Mahesh Maruti Jadhav, Abhijit Ananda Bharmal respectively at Exh. 23, 24, 25, 32 & 33.

Facts and Argument on behalf of plaintiffs:-

10. Learned advocate for the plaintiffs' relying on the documents filed below Exh. 3 & 27 submitted & argued that, suit property is ancestral property of plaintiffs'. They are cultivating the suit property and in peaceful possession of suit property. It is averred that, during year-2006 plaintiffs' were in need of money. Hence, borrowed Rs.45,000/- from defendant no. 1 and borrowed Rs.90,000/- from defendant no. 2 and for security purpose defendant no. 1 and 2 get executed the agreement in their favour from plaintiffs'. It is averred that, the said agreement is transaction of hand loan and not of sale and purchase. It is further averred that, in respect to suit property R.C.S.No. 163/2001 was pending and it was decided on 16/09/2013 resulting into injunction against plaintiffs' in

respect to alienation. Accordingly, in that year plaintiffs' have paid hand loan amount to defendant no. 1 and 2. However, the defendants refused to return the stamps which was executed for security purpose in favour of defendants and time and again avoided to return the stamps. Now, the defendant no. 1 and 2 by taking disadvantage of this stamps trying to encroached upon suit property of plaintiffs'. Even the request of plaintiffs' were refused by the defendants and on 16/01/2022 when the plaintiffs' objected the road acquired by other person, defendant no. 1 and 7 arrived in Gat no.365 and beat the complainant. Hence, there is apprehension to the plaintiffs' that, defendants are in intention to encroached upon suit property. Accordingly, by way of this application prayed to restrained the defendants.

11. Learned advocate on behalf of plaintiffs' argued that, plaintiffs' are owner of suit property. Further, there is injunction against suit property. It is argued that, the person who is adjacent owner of suit property and one who use to tilling the suit property filed their affidavit in favour of plaintiffs' suggesting possession of plaintiffs'. It is argued that, the agreement executed during year-2006 are not of sale purchase transaction or agreement to sale. These were just executed for security purpose and amount referred in that agreement is paid by the plaintiffs' to the defendants during year-2013. It is also argued that, in the said agreement possession is not handed over to the defendants. Therefore, now the defendants by taking disadvantage of document in their possession trying to obstruct the peaceful possession of plaintiffs'. According to learned advocate of plaintiffs', prima facie case is in favour of plaintiffs' and if the defendants are not restrained by way of temporary injunction. The plaintiffs' may suffer irreparable loss whereas if the injunction is

granted no inconvenience will suffer by the defendants. It is further argued that, F.I.R. lodged against defendant no. 1 to 7 is lodged on the action of road incidence on 16/01/2022 suggesting the act of causing disturbance to the peaceful possession of plaintiffs'. Hence, argued to allow the application.

Facts & Argument on behalf of Defendant no. 1 to 7 :-

12. Contrary say to this application is filed at Exh.15. These defendants specifically opposed the contents of application submitting that, plaintiffs' have executed agreement to sale of share of plaintiffs' during year 15/02/2006 to the extent of 10 R. in favour of defendant no. 1 having specific four boundaries which is adjacent to the land of defendants for Rs. 45,000/-. Thereafter, plaintiff no. 1 to 4 executed agreement on 10/03/2006 of the suit property to the extent of 20 R. in favour of defendant no. 2 for consideration of Rs.90,000/-. It is averred that, the above amount is accepted by the plaintiffs' in cash. Further, while executing these documents the plaintiffs' agreed to execute the sale deed, if the pending suit of 2001 decreed in their favour. Further, in that agreement after the decision of suit, it was decided to execute the sale deed within one month by incurring expenses of registration in proportionate manner. However, the plaintiffs' have suppressed the decision passed in R.C.S.No. 163/2001.

13. It is argued that, the defendants have filed counter claim. Further, time to time the defendants requested to plaintiffs' to execute the sale deed. However, plaintiffs' have prolonged the execution in the pretext of pendency of R.C.S.No. 163/2001. Further, there is no refund of amount by the plaintiffs' and just to cheat the defendants, the averment as to refund of money are made. It is submitted that, there is no document in respect to repayment of earnest amount. It is averred

that, defendant no. 1 and 2 are in possession of suit property to the extent of 10 and 20 R. land respectively. According to these defendants, they helped the Raghunath Bharmal and other 21 peoples proceeding from road from Gat no. 365 towards Gat no. 330, 339, 341, 366, 358, 363, 349, 343, 344, 339, 338, 337 to proceed towards that gat number. It is submitted that, the road dispute between Sachin Bharmal and Raghunath Bharmal is indicated as cause of action in this suit. Further, the defendants are taking disadvantage of entries in 7/12 extract. Now, to deprive the rights of defendants this suit is filed. According to these defendants, plaintiff no. 1 and 3 have institute one similar type of litigation against Mahadev Sangar and others, vide R.C.S.No.129/2000. That was decided on 09/11/2010 and these facts are suppressed by the plaintiffs'. Hence, urged to reject the application.

14. The learned advocate of defendant relying on documents filed below Exh. 17 & 19 and documents filed below Exh.31 as well as relying on affidavits below Exh. 23, 24, 25, 32 & 33 argued that, these persons are adjacent owner of suit property suggesting the possession of defendants. Moreover, the affidavits filed on behalf of plaintiffs' do not indicate any attempt to disturb the peaceful possession of plaintiffs'. Moreover, the Well is indicated in the suit property and the contents of affidavits in respect to supply of water in Exh. 29 appears to be false. It is argued that, false cause of action is indicated whereas the defendants are cultivating the suit property by yielding sugarcane and receipts of the same are filed on record. Under such circumstances, if injunction is granted in favour of plaintiffs', inconvenience would be suffered by defendants. Further, defendants were not parties to R.C.S.No.163/2001. Therefore, decision of that suit is not within knowledge of defendants and as this fact is suppressed by the plaintiff, hence, they are not entitled for injunction. Hence, argued to reject the

application.

:- REASONS :-

As to Points No. 1 to 3 :-

15. Points no. 1 to 3 are interrelated with each other, thus, to skip repetition they are discussed together.

16. Perused the record. Heard the learned advocates of both the parties.

17. Admittedly, the 7/12 extract indicate the name of plaintiffs'. Beside that, the plaintiffs' dragged the attention on the agreements to sale those are unregistered agreements to sale. Apart from that, these agreements to sale, do not disclose any statement as to possession delivered at the time of agreement itself or otherwise. Be it so, the defendants come with the counter claim suggesting that, they are in possession of suit property. So far as point of possession is concern the plaintiff relied on 7/12 extract as well as affidavit filed on behalf of him below Exh. 28 and 29. These affidavits suggest the facts of possession of plaintiffs' upon suit property. However, affidavit of Bajirao Bapu Mendake Exh.28 and Sandip Bajirao Bharmal Exh.29 does not indicate the incident of cause of action that any attempt to encroached upon suit property is made by the defendants.

18. Defendants for proof of their possession dragged the attention of this Court below list Exh. 31 wherein bulk of documents is filed on behalf of defendants which prima facie indicate that, the defendants are cultivating sugarcane within their respective share as averred in suit property. Further, the agreement itself prima facie indicates that, these agreements are agreements to sale and not of

transaction as to security. Now, whether such transaction would protect the right and interest of defendants is matter of merit of case. Apart from that, report lodged on 16/01/2022 does not indicate that, these defendants obstructed the possession of plaintiffs'. Rather, it relates to creation of road and steps taken by the plaintiffs'. Now, considering bulk documents below Exh. 31 prima facie indicates that, 10 R. land and 20 R. respectively possessed by the defendants. The receipts since year-2015 specifically and prima facie indicates the name of defendants. Further, the affidavit which relates to supply of water to the plaintiffs' filed by Sandip Bharmal and existence of Well in the suit property prima facie demonstrates that, the plaintiffs' have prima facie ether way pleaded contrary pleading in his suit.

19. So far as question of pendency of litigation is concern in that R.C.S.No. 163/2001, these defendants were not party to that litigation. Further, again similar type of litigation was pending between plaintiffs' and one another person which is decided during year-2010. In such circumstances, the plaintiffs' has not disclosed the material facts in the suit. Further, the plaint itself does not make it clear that, boundaries of suit properties are destroyable and from certain side and the defendants are trying to encroached upon suit property.

20. Thus, considering prima facie mismatch relation of criminal report with cause of action, want of documents as to cultivation of cash crops i.e. sugarcane etc. in the suit property and suppression of one another litigation i.e. R.C.S.No.129/2000 and silence of witness on behalf of plaintiffs' as to disturbance by the hands of defendants, the plaintiffs' at this stage are not entitled for injunction. Moreover, considering affidavits filed at Exh. 23 to 25 &

32 & 33 with the documents relied by the defendants prima facie, indicate that, if any injunction granted in favour of plaintiffs', the defendants may suffer inconvenience resulting into hardship. Accordingly, this Court answered the point No. 1 to 3 in the negative and point No. 4 following order is passed:-

ORDER

1. The application (Exh.5) is rejected.
2. No order as to costs.

Kagal.
Date:- 31/07/2023.

Sd/-
(B. D. Gore)
Civil Judge Junior Division,
Kagal.