



R.C.S.No. 52/2023

Ananda Patil Vs. Hindurao Mhatugade etc.

CNR - MHKO130002782023

ORDER PASSED BELOW EXH.05

(Dt. 06/09/2023)

1. This application is filed by the plaintiff against defendant no. 1 to 13, under Order 39 Rule 1 and 2 of the Code of Civil Procedure (in short 'CPC').

2. According to the plaintiff, agricultural property Gat No. 3 admeasuring total area of 5 H. 26.9 R., Pot Kharab 0 H. 03 R., out of area 1 H. 26 R. situated at Savarde Budhruk, Tal. Kagal, Dist. Kolhapur and it is divided by following vasale/portion:-

- A) Gat no. 3 area 0 H. 03.25 R.
- B) Gat no. 3 area consisting area 0 H. 03.25 R.
- C) Gat no. 3 area consisting area 0 H. 03 R.
- D) Gat no. 3 area consisting area 0 H. 32.50 R.
- E) Gat no. 3 area consisting area 0 H. 06.50 R.
- F) Gat no. 3 area consisting area 0 H. 08 R.
- G) Gat no. 3 area consisting area 0 H. 25.50 R.
- H) Gat no. 3 area consisting area 0 H. 39 R.
- I) Gat no. 3 area consisting area 0 H. 03 R.
- J) Gat no. 3 area consisting area 0 H. 02 R.

above suit property well described with boundaries is subject matter of this application (hereinafter referred as "suit property"). The gist of application is to restrain the defendants from causing disturbance to the peaceful possession of suit property and to restrained the defendants from causing ouster of the plaintiff

from suit property during pendency of suit.

3. Defendant no. 1 to 13 have filed their W.S./say at Exh.26 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. S.S.Kestikar learned advocate appearing on behalf of plaintiff and Shri. A.P.Paste learned advocate appearing on behalf of defendant no. 1 to 13. From the pleading 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 plaintiff ?	:-No.
2.	Whether balance of convenience lies in favour of plaintiff ?	:-No.
3.	Whether plaintiff would suffer irreparable loss if injunction is refused ?	:-No.
4.	What order?	:-	Injunction Rejected.

:- DOCUMENTS :-

6. The plaintiff relied on following documents filed at Exh.3, 15, 22, 24, 33, 36 & 45 which includes 7/12 extracts, 8-A extracts, mutation extracts, photos of suit property, assessment extracts, N.C.R. report, original sale deed no. 1712/2010 dated

20/10/2010, aadhar card, voting card, bank passbook, license, insurance policy, pan card, certificate of Police Patil, domicile certificate, paid tax receipt, death certificate, letter, money order, Exh.1 & rojnama in R.C.S.No. 58/2007, Exh. 5 & order in R.C.S.No.58/2007, sugarcane record, sugarcane bill receipts, water tonnage extract etc. as well documents filed by the plaintiff. Further, plaintiff has filed on record his affidavit at Exh. 27 and further filed on record affidavits of witnesses namely Rajaram Dyandev Patil, Ashok Mahadev Patil, Sagar Krushna Pathade & Machindra Pandurang Mane respectively at Exh. 28, 29, 30 & 31.

7. The defendant no. 1 to 13 have relied on following documents filed at Exh. 39 which includes Judgment in Tenancy Case no. 61/2006, sale certificate, mutation entry no. 2845 & 2861, Exh.1 & W.S. of defendant no. 1 in R.C.S.No. 58/2007, photos, tax receipts, education tax receipt, complaint application, diary extract no. 6758 & 6757 and Judgment passed in Tenancy/240/B/2008 etc. Further, defendants have filed on record affidavits of witnesses namely Dilip Shivaram Mhatugade, Ravindra Hari Gurav, Mahadev Tukaram Chavan, Krushnath Bhau Gharal and Banderao Shankar Mhatugade respectively at Exh. 40, 41, 42, 43 & 46.

Facts and Argument on behalf of plaintiff:-

8. According to plaintiff, the suit property is earlier owned by Kulkarni family and predecessor of plaintiff and defendants were tenant in the suit property. The predecessor of plaintiff and defendants used to cultivate their independent area which was in their possession. The property as indicated in the plaint, later on succeeded by the plaintiff. It is averred that, meantime owner of suit property vide registered sale deed no. 1712/2010 executed on

12/10/2010 sold the suit properties to the plaintiff. Hence, tenancy rights of plaintiff changed in the ownership. Accordingly, mutation is carried out vide no. 4222.

9. It is averred that, suit property portion A is village property no. 921. Further, the plaintiff used to cultivate sugarcane, groundnut and paddy. Moreover, the defendants are no way concern with the suit property. It is averred that, defendants and their predecessor have their portions in the suit property and this area is also disclose in the suit map. It is averred that, defendants and predecessor of defendants caused obstruction to the plaintiff possession. Hence, plaintiff had instituted suit against the defendants vide R.C.S.No.58/2007. It is averred that, injunction in that suit is rejected, because of absence of four boundaries of portions. Later on plaintiff remain absent in the suit. Hence, that suit is dismissed. After that defendants and their predecessor have not caused obstruction.

10. According to plaintiff, defendant no. 1 to 5 on 13/02/2023 demolished the farm house of plaintiff by JCB, situated within portion A of suit property as plaintiff went to his job at Ichalkaranji. The plaintiff lodged the report of that incident on the same day. However, police have not took cognizance. Further, the defendants replied evasively when the plaintiff inquired about the act of demolishing of house, as well the defendants threatened the plaintiff that, they will dispossess him from suit property portion A and B and will construct the house in the suit property. According to plaintiff, main road is passing from suit Gat no. 3, and the portion of defendant no. 1 to 5 is adjacent to suit portion A and B. Now, intentionally the defendants to grab the suit property portion A and B

causing obstruction to the peaceful possession of plaintiff. Later on 21/02/2023 when the plaintiff gave understanding to the defendant no. 1 to 5, they threatened the plaintiff to dispossessed from suit property. Further, recently it is acknowledged from 7/12 extracts to the plaintiff that, defendants with their will and wish illegally recently executed the sale deeds by referring wrong boundaries. It is submitted that, in previous suit defendants have not indicated separate share and now the defendants are trying to oust the plaintiff from suit property. It is submitted that, the defendants have obtained sale deeds illegally vide section 43(A)(3) of Bombay Tenancy and Agricultural Lands Act (hereinafter, referred as Act or BT & AL Act) and plaintiff was not party to that sale. Further, there is no whereabouts of Dattatray Patil (who was defendant no. 7 in R.C.S.No.58/2007), since many years, even he was party to tenancy proceeding and his false signature is put up in the tenancy proceeding.

11. Learned advocate relying on above set of facts argued that, plaintiff is residing at Savarde and filed several documents to indicate that fact. It is argued that, the Gopal Patil was grandfather of plaintiff. Further, previous pleading of defendants in R.C.S.No.58/2007 as well pleading in this matter is one and the same and defendants have not had knowledge about the grandfather of plaintiff, who was tenant of the original owner. It is averred that, there is no bar to sell the tenancy property and sale is duly executed by owners of suit property.

12. It is argued that, when the earlier house is demolished by defendants, the plaintiff has lodge the report of the same. Further, the defendants also started the illegal construction upon suit property

and under section 94 of C.P.C. relief is also granted by this Court below Exh. 20. Further, as suit property portion A and B are road touch, the defendants are causing obstruction to possession of the plaintiff to grab the valuable immovable property. It is argued that, several witnesses residing in locality submitted the affidavits in respect to possession of plaintiff. Further, defendants have no title over entire suit property nor they are explaining that to whom the rest of the property belongs.

13. It is argued that, plaintiff has not suppressed the previous litigation. Hence, the plaintiff approached with clean. It is added that, by way of sale the plaintiff became owner of suit property and if injunction refused the defendants may cause obstruction and oust the plaintiff from suit property. According to plaintiff, assessment of Grampanchayat property no. 921 indicate the name of plaintiff. That suit house property is well refer the title of the plaintiff suggesting his possession. Hence, relying on affidavits, sale deed documents as to address proof and cultivation, photos of property coupled with relevant provisions of BT & AT Act, prayed to allow the application.

Facts & Argument on behalf of Defendant no. 1 to 13 :-

14. Contrary, learned advocate of defendant no. 1 to 13 filed their W.S. at Exh.26 with specific denial. It is further submitted that, the plaintiff is engaged in service at Ichalkaranji, Tal. Hatkangale in Jaywant Mahavidyalay and now, residing permanently at Ichalkaranji. It is averred that, the description of suit property is not specific and boundaries are fictitious and false. It is contended that, the plaintiff was never in possession of suit property. According to defendants, the plaintiff has self asserted the possession of suit

property and submitted the false map. Hence, the plaintiff is not entitled for equitable relief. It is submitted that, contention as to possession of suit property at tenant is also false.

15. According to defendants, suit property is earlier owned by Vasant Damodar Kulkarni. Further, in that suit property Gopal Mhatugade, Gopal Krushna Patil and Sadu Rama Kirolkar were tenants. 7/12 extract of all suit property are in the name of these three tenants. Out of that, Gopal Mhatugade and Gopal Krushna Patil possessed the 12 Acre land and Sadu Kirolkar possessed 1 Acre land. It is averred that, the defendants are legal heirs of Gopal Mhatugade and Gopal Patil. It is averred that, the plaintiff is not in possession of 1 H. 26 R. land.

16. According to defendants, it is averred that as per tenancy rules they have right to purchase suit property from true owner. As a matter of facts, vide tenancy case no. 61/2006, the plaintiff purchased the suit property vide section 43(A)(3) of BT & AL Act. The said proceeding decided on merit and application for purchase is allowed on 27/12/2006. Further, the plaintiff has no concern with that decision. It is averred that, accordingly defendant no. 1 to 5 became owner of 1 H. 20 R. land and defendant no. 6, 8, 10 to 13 have received sale certificate of 40 R. land each. Thereafter, mutation entry is effected vide no. 2845 and name of predecessor of defendants were entered in the 7/12 extract in occupant column as well in the column of cultivation.

17. It is averred by the defendants that, no sale is executed between owner of suit property and plaintiff, whereas the purchaser as alleged by the plaintiff i.e. Harshad Kulkarni and Sujay Kulkarni are residing in America. Hence, the said alleged sale is illegal and no

possession is received by the plaintiff as averred. It is submitted that, mutation entry no. 4222 is illegal. Hence, the question of tenancy right as well as possession would not arise. It is submitted that, the tenancy litigation between owner and plaintiff are resulted in the negative finding and after the death of Vasant Kulkarni his LR's executed false sale. It is averred that, earlier the plaintiff instituted R.C.S.No.58/2007 against Vasant Kulkarni and these defendants, in that suit the plaintiff has not disclosed four boundaries. Hence, interim application in that suit was dismissed. Further, plaintiff has not preferred appeal on that decision. Later on he amended that suit further, similar map is filed in this suit.

18. It is contended that, R.C.S.No. 58/2007 was dismissed by this Court due to absence of interest of plaintiff and the present suit is also lacking of merit like earlier suit. It is submitted that, plaintiff was never possessed the suit property. It is pleaded that, the plaintiff does not possessed any house in portion A of the suit property. Further, he has obtain false extract from Grampanchayat and for that purpose complaint is also made before the Grampanchayat. It is averred that, alleged portion A is not in possession of defendant no. 1 to 5, where as they have their old farm house which was in dilapidated conditions. Hence, by demolishing that house, they have re-constructed farm house on 04/06/2023. It is averred that, as the plaintiff does not possess any house, thus, the question of demolishing his farm house would not arise. Further, on 21/02/2023 the plaintiff never approached in the suit property. It is averred that, the question as to obtain the consent of plaintiff while purchasing property from true owner as per section 43(A) of BT & AL Act would not arise.

19. It is averred that, there is no cause of action to the suit. Further, the plaintiff not being tenant of the suit property, he is not entitled for injunction. It is averred that, there is no prima facie case in favour of plaintiff in respect to possession. Whereas, the defendants are in possession and if the injunction is granted against the defendants, the defendants may suffer irreparable loss.

20. Learned advocate of defendants relying on several documents filed on record argued that, the sale does not disclose four boundaries as referred in the plaint. It is argued that, true owner Vasant Kulkarni died on 12/10/2010 and soon after that, his death is registered and after couple of days the sale deed is executed in suspicious circumstances. Further, the sale deed does not bear signatures and photos of legal heirs of Vasant Kulkarni at relevant column. It is argued that, the plaintiff is not in possession of 1 H. 26 R. land. Further, plaintiff or predecessor were not tenant in the suit property. Apart from that, the plaintiff is residing at Ichalkaranji working in Jaywant Mahavidyalay. Therefore, his possession is not upon suit property.

21. It is argued that, in earlier R.C.S.No. 58/2007 the plaintiff failed to prove his prima facie case and upon similar set of facts the plaintiff is not entitled temporary injunction. It is argued that, the plaintiff has self asserted the boundaries and to authenticated this facts there is nothing on record. It is averred that, plaintiff has suppressed the true facts from the Court, hence, on that count plaintiff is not also entitled for equitable relief. According to defendants, the documents filed below Exh. 39 and affidavits of witnesses authenticated the possession of defendants over suit property. Hence, in absence of prim facie case learned advocate to

argued to reject the Exh. 5.

:- REASONS :-

As to Points No. 1 to 3 :-

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

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

24. Both the parties have support their case with respective documents and affidavits as well with legal provisions. So far as title of plaintiff is concern, he averred that, earlier his grand father was tenant and defendants have no knowledge about the same. Further, sale executed by true owner is brought on record. That sale deed is strongly objected by the learned advocate of defendants suggesting several lacuna as well the defendants also denied tenancy of plaintiff upon suit property. However, mutation entry no. 1267 suggest the name of predecessor of the defendants and plaintiffs. Further, mutation entry no. 63 also disclosed that, after death of tenant Gopal Patil, the father of plaintiff with other heirs succeeded the property.

25. Be it so, in R.C.S.No. 58/2007 the injunction of plaintiff was rejected on the ground of absence of four boundaries. During pendency of R.C.S.No. 58/2007, sale was executed during year 2010. Even though, the injunction was refused on the sole ground of absence of four boundaries, that fact is not meticulously rectified in the sale deed at the time of purchase of suit property. No doubt, there is explanation on part of defendants as to exclusive ownership, where as the plaintiff either by way of tenancy or by purchase making efforts to indicate his possession over suit property.

26. Be that as it may, considering sale deed executed in favour of plaintiff during year-2010 is concern, the said deed entirely speaks the area without boundaries. From perusal of sale deed executed during year-2010 it does not speak about separate 10 portions, nor separate boundaries were referred in the sale deed. Thus, by considering prima facie facts of such sale deed in question specific boundaries can not be ascertained only on the basis of pleading.

27. So far as suspicious circumstances as to sale and legal provisos of BT & AL Act is concern, that would help the parties at respective turn of trial. Admittedly, there is nothing with the defendants to indicate their exclusive ownership over entire suit property nor the plaintiff bears documents as to perfect four boundaries of suit property. Thus, merely on previous pleading and tenancy rights the boundaries cannot be assumed when the boundaries are seriously disputed by the defendants.

28. Injunction is sought by the plaintiff for entire 10 portions where as affidavits of witnesses of plaintiffs are appearing limited to the specific suit property portion 1(A) & 1(B). Those affidavits at this stage do not disclose the four boundaries. Under such circumstances granting injunction restraining the defendants would cause inconvenience to the defendants.

29. Admittedly, the defendants can not became owner of suit property beyond the area of their sale nor the plaintiff will loose his title upon suit property to the extent of area what he has purchased out of Gat no. 3, if it exists as per 7/12 extracts. Except the assessment extracts and tax receipts of the Grampancyat Property No. 921, there is no history explained by the plaintiffs as construction or

maintenance of that house at this stage.

30. Further, at this stage, there appears no efforts on part of plaintiff to rectifying the sale deed with boundaries. So far as signature of absconded person Dattatray Patil in tenancy proceeding absence of consent of plaintiff while sale in favour of defendants and its effect, will be looked into at the time full fledged trial. The averments in the plaint and affidavits of witnesses filed on behalf of plaintiff are basically concentrate the suit property A and B, further, documents as to cultivation of crops of sugarcane and several receipts, impliedly prima facie indicate that rest of the suit property portions are free from disturbance. Hence, the case put by the plaintiff as to ouster is also not on sound footing at this prima facie stage. Consequently, in absence of strong prima facie case the this Court is not inclined to grant any interim relief to the plaintiff at this stage. 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:- 06/09/2023.

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