



R.C.S.No. 62/2021

Tukaram Katore etc. Vs. Balu Katore etc.

CNR - MHKO130002812021

ORDER PASSED BELOW EXH.05

(Dt. 12/07/2022)

1. This application is filed by the plaintiffs' against defendants, under Order 39 Rule 1 and 2 of the Code of Civil Procedure (in short 'CPC').
2. According to the plaintiffs', Gat no.2038/2 admeasuring area of 0 H. 73 R situated at Sonali, Tal. Kagal, Dist. Kolhapur bounded as mentioned in the plaint is subject matter of suit. (Hereinafter referred as "suit property".)
3. By this application the plaintiffs have sought relief to restrained the defendants from causing disturbance to the peaceful possession over suit property as well to restrained the defendants from causing alienation of suit property to any third person.
4. Contrary say to this application filed by learned advocate for defendants below Exh.24. Defendants specifically denied the contents of application and suit.
5. To avoid repetition of facts, brief facts of application and written say are referred in the argument of learned advocates of respective parties.
6. Heard Shri. G.V.Chougule learned advocate appearing on behalf of Plaintiffs' and learned advocate Shri. S.K.Patil appearing on behalf of defendants. Form the pleading and arguments of Ld. 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' ?	:-	...Partly Yes.
2.	Whether balance of convenience lies in favour of plaintiffs' ?	:-	...Partly Yes.
3.	Whether plaintiffs' would suffer irreparable loss if injunction is refused ?	:-	...Partly Yes.
4.	What order?	:-	Injunction Partly Allowed.

:- DOCUMENTS :-

7. The plaintiffs' relied on following documents filed at Exh. 3.

1.	Certified copy of 7/12 extract of Gat no. 2038/2.
2.	Original copy of registered sale deed no. 851/1981.
3.	Certified copy of mutation register at Sonali, Tal. Kagal.
4.	Certified copy of death certificate of Tukaram Katore.
5.	Certified copy of death certificate of Sakharam Katore.
6.	Certified copy of death certificate of Mahadeo Katore.
7.	Certified copy of death certificate of Sambhaji Katore.

8. The plaintiffs' further relied on documents filed at Exh.30.

1 - 2.	Certified copy of 7/12 extract of Gat no. 2038/2 of the year 1992 to 2002 & 2002 to 2017.
3.	Certified copy of registered sale deed no. 60/1982 executed on 22/01/1982.
4.	Certified copy of registered sale deed no. 292/1988 executed on 21/03/1988.

9. The defendants relied on following documents filed at Exh.27.

1.	Xerox copy of receipt of measurement of suit property.
2.	Xerox copy of notice of measurement of suit property.
3.	Certified copy of consolidation extract of Gat no. 260.
4.	Certified copy of 7/12 extract of R.S.No. 226/13 of the year 1956 to 1966.

10. Learned advocate for the defendants have filed affidavit of witness Madhukar Hari Kharade at Exh. 28.

Argument on behalf of Plaintiffs':-

11. It is pleaded and argued that, suit property was earlier owned by one Mahadeo Tukaram Katore, i.e. brother of defendant no.1. He sold out 15 R. land from above Gat number, to the predecessor of plaintiffs' on 08/06/1981 vide Reg. Deed no. 851/1981 for consideration of Rs.2,000/- from East side of above Gat No.

12. Since then predecessor of plaintiffs' i.e Tukaram Dhondi Katore and Sakharam Katore were in possession. Tukaram Katore and Sakharam respectively died on 01/12/2008 and 18/12/2013. It is pleaded that, son of Sakharam i.e Sambhaji also died on 24/06/2015. Thereafter, the plaintiffs' came in possession of suit property.

13. According to ld. advocate of plaintiffs' due to illiteracy predecessor of plaintiffs' could not record their names in 7/12 extracts. However, their name is referred in crop column of suit property to the extent of 15 R. land. It is argued that, that the said entry was in existence till digitalization of 7/12 extracts. According to plaintiffs', after death of predecessor of plaintiffs' i.e Mahadeo Katore on above referred date, the defendants have entered their names without any right.

14. It is argued by the Ld. advocate of the plaintiffs' that, now the defendants by taking the disadvantage of the said entry, communicated to the plaintiffs' on 20/02/2021, their wish to sale or alienate the property to third person and tried to disturbed the peaceful possession. As per plaintiffs', defendants trying to dispossess the plaintiffs' from the suit property when the defendants have no concern from East land. Hence, filed this suit and application for above referred purpose.

15. It is added by Ld. advocate of plaintiffs' that, the sale deed is of 1981, that it is thirty years old and registered document. Moreover, one another sale deed was executed by the predecessor of the defendants i.e. Mahadeo Katore on 1982, to the extent of 24 R. the said sale deed also indicate the possession of the plaintiffs' from East side. This sale deed also more than 30 years old. Further, the documents as to mutation and 7/12 extracts does not disclose the title. Now, there are threats to the possession of plaintiffs', by way of intention of sale or alienation to the third person and any such alienation or dispossession caused, the plaintiffs' may suffer irreparable loss. According to him, two sale deeds disclose their possession, hence prima facie case and balance of convenience lies in favor of plaintiffs'. Accordingly, argued to allow the application.

Argument on behalf of Defendants:-

16. Contrary Ld. Advocate of defendants submitted and argued that, the predecessor of defendants was protected tenant of suit property. He became deemed purchaser on 01/04/1957. Hence, being legal heirs the defendants have their share in the suit property. Further, deceased Mahadeo never executed any sale deed and since death of Mahadeo the said suit property is in possession of defendants. It is contended by the defendants that, stream approaching from East side passing from the

middle of the suit property and turned towards North. Hence, suit property is divided. There are other share holders in the suit property having easement way. These facts are suppressed by the plaintiffs'. Since 40 years the plaintiffs' were not vigilant to make entries in revenue record as well as in mutation column. Further, in the pleading as well as in the sale deed there is ambiguity in description of suit property. Moreover, there is no incident as to dispossession referred in the pleading.

17. According to Ld. advocate of defendants, 7/12 extracts and mutation entires bear the presumption. A person adjacent to land holder of defendants filed the corroborative affidavit at Exh.28. It is argued that, if the injunction is granted the defendants may suffer irreparable loss. Contrary, the plaintiffs' were not vigilant. Hence, urged to reject the application, as the plaintiffs' have no prima facie case.

:- REASONS :-

As to Points No. 1 to 3 :-

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

19. Perused the record. heard the learned advocate of the parties at length. Admittedly there is sale deed executed in favour of plaintiffs in the year 1981 to the extent 15 R. and again the reference from East side is appeared in the sale deed executed in the year 1982 by one Mahadeo. The both sale deeds are 30 years old documents and bears the presumptions. Contrary, entries in revenue record also bears the presumption as per section 157 of Maharashtra Land Revenue Code. Both the presumption are rebuttable and parties may lead appropriate evidence for rebuttal during trial, therefore much cannot be discussed in this regard.

20. Be that as it may, the plaintiffs' have described the suit property as per the sale deed. Entire four boundaries are not referred in the sale deed nor in the plaint to get identified the suit property. Beside that, the plaintiffs' have not challenged the entries in 7/12 extracts those are long standing in the name of defendants before Appropriate Authority since they acknowledged the fact of their missing entries. Even, if the cause of action date clause is perused, the said incident disclose only communication of alienation of suit property at the hand s of defendants. Moreover, affidavit of Madhukar Kharade (Exh.27) disclose and corroborated the contents of the w.s. at this stage.

21. For seeking equitable relief, the plaintiff has to prove the prima facie case. Prima facie case, it means case of injury and the court has to intervene in the matter before ascertaining the final rights of party, to prevent the party from injury and irreparable loss. Further there should not cause any inconvenience to the party by such intervention. Admittedly, the plaintiffs' have not disclosed the boundaries of his alleged possession. At this stage, prima facie there is no proof with the plaintiffs' that, defendants caused disturbance to their alleged possession.

22. It is also not disclosed by the plaintiffs' that, any physical force or manpower used by the defendants. Therefore, due to absence of specific description of suit property, absence of revenue entry, want of facts as to invasion, if any injunction as to restraining the defendants from causing the disturbance to the alleged possession of plaintiffs' is granted at this stage it may create multiplicity of proceeding rather it may cause inconvenience to the defendants than plaintiffs'. Hence, to that respect the plaintiffs' have no prima facie case, balance of convenience, and if such injunction restraining the defendants from causing disturbance to the peaceful possession of plaintiffs' is granted

the defendants may suffer irreparable loss.

23. So far as the ownership to the extent of 15 R. over suit property is concerned by way of registered sale deed tagged below Exh.3, and during pendency of suit any such alienation caused by the defendants, that may create multiplicity of proceeding and may injure the rights and interest of the plaintiffs' in the suit property as stated by the plaintiffs'. Thus, having regard to document of title the plaintiffs' have prima facie case and balance of convenience lies in their favour in respect to alienation, thus alienation on part of defendants may cause irreparable loss to plaintiffs' which cannot be compensated in term of money. Rather by grant of such injunction no inconvenience will be caused to the defendants. Hence, issue No. 1 to 3 are answered partly in the affirmative and for issue No. 4 following order is passed.

ORDER

1. The application (Exh.5) is partly allowed.
2. Defendants are temporally restrained from causing alienation of suit property to third person in any manner (i.e. by way sale, gift, mortgage, lease, or by any mode of transfer of property), till disposal of suit .
3. The prayer of plaintiffs' in respect to restraining the defendants, from causing disturbance to the peaceful possession of plaintiffs' is rejected.
4. Costs in cause.

Kagal.
Date: 12/07/2022.

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