

**R.C.S.No. 100/2021**

Uddhav Patil Vs. Kalpana Patil etc.

CNR - MHKO130004442021**ORDER PASSED BELOW EXH.05****(Dt. 26/09/2022)**

1. This application is filed by the plaintiff against defendant No.4 & 5, under Order 39 Rule 1 and 2 of the Code of Civil Procedure (in short 'CPC').
2. According to the plaintiff, property Gat no. 87 admeasuring area of 0 H. 67 R., situated at Mouje Malage Khurd, Tal. Kagal, Dist. Kolhapur bounded and well described in the plaint is subject matter of suit. (Hereinafter referred as “suit property”.) The gist of application is to restrain the defendants from causing disturbance to the peaceful possession of plaintiff upon suit property.
3. Defendant no. 3 to 5 filed their W.S./say at Exh.25 by denying the contents of Exh.5. Yet the defendant no. 1 and 2 are not duly served in this matter. As the injunction is only against defendant no. 4 and 5, application proceeded further.
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. G.V.Chougale learned advocate appearing on behalf of Plaintiff and Shri. K.D.Jadhav learned advocate appearing on behalf of Defendant No. 3 to 5. Form 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 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 & 21.

1.	Certified copy of 7/12 extract of Gat No. 87 situated at Malage Khurd, Tal. Kagal.
2.	Certified copy of 8-A extract of property situated at Malage Khurd, Tal. Kagal.
3 – 5.	Certified copy of registered sale deed no. 1297/2020, 1030/2021 & 1031/2021 dated 03/06/2021.
6.	Photo copy of notice published by Adv. G.V.Chougale dated 09/06/2018.
7.	Certified copy of 7/12 extract of Gat No. 87 situated at Malage Khurd, Tal. Kagal dated 29/08/2011.
8.	Certified copy of mutation extract of mutation entry No. 1038 situated at Malage Khurd, Tal. Kagal.
9.	Certified copy of 7/12 extract of Gat No. 87 situated at Malage Khurd, Tal. Kagal of the year 2004 to 2015.

7. Learned advocate for the plaintiff placed his reliance on following case laws at Exh. 22:-

1.	Ramdas Vs. Sitabai & Ors., 2009 DGLS (SC) 968.
2.	Gajara Vishnu Gosavi Vs. Prakash Nanasaheb Kamble & Ors., 2009 DGLS (SC) 1324.

8. The defendant no. 3 to 5 relied on following documents filed at Exh.27.

1.	Certified copy of mutation entry no. 1968 of suit property dated 26/12/2019.
2.	Photo copy of mutation entry no. 2081 of suit property dated 19/03/2021.
3.	Certified copy of mutation entry no. 2097 of suit property dated 28/04/2021.
4.	Certified copy of mutation entry no. 2100 of suit property dated 28/04/2021.

9. Learned advocate for the defendant no. 3 to 5 placed his reliance on following case law & court order at Exh. 29:-

1.	Graftek Pvt. Ltd. And Ors. Vs. Shri Lord Lingaraj Mahaprabhu, AIR 1999 Ori 49.
2.	Order passed below Exh. 5 in R.C.S.No. 102/2021 dated 29/04/2022 by this court.

Facts and Arguments of the Plaintiff:-

10. Learned advocate for the plaintiff relying on the documents filed below Exh. 3 and 21 submitted that, suit property is ancestral property of plaintiff and defendant No. 1 and 2 consisting his half share with Kasturi Nichite, Rai Khade, Narmada Dafale, Sharubai Patil. It is submitted that, yet the partition between predecessor of the plaintiff and defendant No. 1 and 2 is not effected. It is averred that, originally the suit property is owned by

Ramchandra Patil, having sons Hari Patil, Shripati Patil, Krushna Patil, Vitthal Patil, Ambaji Patil and Savba Patil. After death of Ramchandra, predecessor of the plaintiff mutated the property in his name as well the Ambaji and Savba also registered their names in the 7/12 extracts of the suit property. However, said mutation is not carried out by fixing boundaries.

11. It is the case of the plaintiff that, defendant No. 1 and 2 used to reside with their predecessor at Pune and this defendant cultivated the entire suit land. However, it is notice by the plaintiff prior to suit that, on 23/09/2020 the defendant no. 1 and 2 sold their half share in the suit property vide Registered No. 1297/2020 to defendant no. 3. It is averred that, the defendant No. 1 and 2 have no right to sale the suit property to defendant No.3. Further, this defendant no. 3 sold the suit property without any right and interest in the property to defendant no. 4 and 5, vide registered no. 1030/2021 and 1031/2021 respectively on 22/04/2021.

12. It is pleaded that, on 23/04/2021 defendant no. 4 and 5 obstructed the peaceful possession of plaintiff by claiming that, they have purchased the half share from the suit property and threatened the plaintiff with dire consequences if he refused to hand over the possession. Thus, being aggrieved with above facts filed this application to restrained the defendants from causing disturbance to the peaceful possession of plaintiff.

13. Learned advocate of the plaintiff relying on above facts and case laws argued that, the sale deed executed on 23/09/2020 is executed by the defendant no. 1 and 2 referring entire boundaries of

suit property. Thus, the defendants are taking the disadvantages of the same. Further, as there are entire boundaries in the 1st sale deed subsequent boundaries in the sale deeds cannot be considered as true. Further, partition is not taken place between the predecessor of the plaintiff and defendant No. 1 and 2. It is argued that, in the year 2018 this plaintiff has issued paper publication informing his possession over suit land and consequence thereof. It is argued that, being Hindu he has right to purchase the property first in point of time by way of right of preemption thus stranger purchaser have no rights in the suit property.

14. It is argued that, the revenue entries are challenged before appropriate forum. According to plaintiff, now taking benefit of the wrong boundaries in the sale deeds, the defendants are trying to dispossess the plaintiff and causing disturbance to the peaceful possession of the plaintiff upon referred boundaries in the first sale deed.

15. It is argued that, prima facie case, balance of convenience lies in his favour, as well as if the injunction is refused he will suffer irreparable loss. Therefore, till the disposal of suit the defendant no. 4 & 5 are required to be restrained from disturbing the peaceful possession of plaintiff over suit property by way of interim injunction. He dragged the attention of this court with relevant ratio laid down in the cited Judgment referred above.

Facts and Argument on behalf of Defendant no. 3 to 5:-

16. Contrary say filed on behalf of the defendant no. 3 to 5 is of total denial. It is their defence that, suit property is partitioned

between the predecessor of plaintiff and defendant No.1 and 2. The defendant No. 1 and 2 sold their legal rights to the defendant No. 3. Thereafter, the defendant No. 4 and 5 purchased the suit property thus they are bonafide purchaser for consideration. Accordingly, their names are appeared in the 7/12 extracts. It is pleaded that, the plaintiff has no right of preemption as the suit is not in that format.

17. It is argued that, the plaintiff is at North side from the half share of the suit property having peaceful possession over his half share. Moreover, revenue entires would not be factor of possession unless the contrary proved. According to these defendants, mutation is also carried out and appeal there from is pending. It is argued that, revenue entires are just for fiscal purpose and just to deprived the rights of the parties this suit and application is filed. Moreover, similar nature of application filed by the plaintiff in the R.C.S.No. 102/2021 is rejected by this court. It is argued that, if the injunction is granted it will be misused by the plaintiff causing inconvenience to the defendants, hence, argued to reject the application.

:- REASONS :-

As to Points No. 1 to 3 :-

18. Perused the record. Heard the learned advocate of the both the parties. Points no. 1 to 3 are interrelated with each other, thus, to skip repetition they are discussed together.

19. It is admitted that, prior to this application Exh. 5, R.C.S.No. 102/2021 is decided by the then learned predecessor of this court. However, said order is not binding precedent to this court. Be it so, the plaintiff averred that he has issued the paper publication in the year-2018. However, soon after that, the plaintiff would not

filed the suit for preemption, and the suit is filed after the second transaction of the suit property.

20. The pleading of the parties indicate that, revenue entries are challenged before Appropriate Authority, however such entries are rebuttable. Though, the 1st sale deed prima facie does not indicate the specific boundaries, the subsequent sale deed impliedly at this stage clarifies the prima facie possession of the defendant no. 4 and 5. Apart from that, the plaintiff has not claim the partition in this suit and neither any co-sharer from the family of the plaintiff is aggrieved by such act of defendant no. 1 and 2.

21. There are two subsequent purchaser in this matter and there is no dispute between them as to possession. The present revenue record and sale deed indicate the prima facie possession of the parties equally upon suit property. The paper publication which were issued once in the year-2018 but thereafter, it was not issued time to time with lucid interval. Mutation entry no. 1038 prima facie indicate the reference of word “by partition” moreover measurement and separate entries are effected upon that mutation in 7/12 extracts. Admittedly, the case is not for partition, however the plaintiff put emphasis upon joint possession over suit property being co-shares. But, the plaintiff has not filed any witness affidavits to support his contention. As already stated that, except the plaintiff other co-shares have not agitated the same facts by appearing in this matter.

22. Admittedly, in the other suit i.e. R.C.S.No. 102/2021 this court held the possession of this defendant no. 3, (who is purchaser of half share of suit property). Beside that, the seller of the suit property are the same defendants i.e. no. 1 and 2 in this matter. The

transactions between defendant no. 1 and 2 and defendant no. 3 at this stage are appearing to be contemporaneous in nature. The subsequent sale deed prima facie specifically define the boundaries of the suit property indication the position of the plaintiff at North Side.

23. Thus, the entire facts at this stage clarifies the prima facie possession of the defendant no. 4 and 5 to the extent of half share of the suit property. The case laws of **Ramdas Vs. Sitabai & Ors.** and **Gajara Vishnu Gosavi Vs. Prakash Nanasaheb Kamble & Ors.** are based upon full fledged trial. Thus, ratios laid down in the above case laws are mismatched at this initial stage with the facts and circumstances of the case in hand, with due respect. Hence, if injunction is granted in favour of the plaintiff the defendants would cause inconvenience. Moreover, only half share is referred in the sale deed and the plaintiff is also claiming the half share. Hence, in the near future dispute between the parties can be settled amicably for their better future relation. Considering, the above aspect as there is no immediate prospect of inconvenience to the plaintiff as well as want of prima facie case in favour of plaintiff, this court is not inclined to allow the application, in the result point no. 1 to 3 answered in the negative and for point no.4 following order is passed.

ORDER

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

Kagal.
Date: 26/09/2022.

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