

MHKO130004512021

R.C.S.No. 102/2021



Uddhav Patil Vs. Kalpana Patil & others.

ORDER PASSED BELOW EXH.05
(Dt. 29/04/2022)

1. The current application is filed by the plaintiff under Order 39 Rule 1 and 2 of the Code of Civil Procedure(in short CPC) with request to restrain defendant no.3 from causing obstruction and interference in the peaceful possession of the plaintiff over the suit property.

Brief facts of the plaintiff case is as under:-

2. The following property is hereinafter will be referred as “the suit property”-

Sr. No.	Village	Gat No.	Total Area
1.	Malge Khurd	74	0.17 R.

3. As per the plaintiff, suit property is ancestral property of the plaintiff and defendants No. 1 & 2. The plaintiff is having his 1/2 share in the suit property along with Kasturi Nichite, Rai Khade, Narmada Dafale, Sharubai Patil. In respect of the suit property no partition has taken place in between the parties. The ancestral other properties of the plaintiffs and defendants are also not partitioned. In such factual situation, defendants No.1 & 2 have sold their share to defendant No.3 by way of registered sale deed No.734/2020 dated 15.05.2020. In fact, defendants have no right to sold out the said property with four corners as mentioned in the sale deed. The sale deed document is bogus and executed without transferring the

possession.

4. It is submitted by the plaintiff that, the suit property was originally belonging to the Ramchandra Laxman Patil. After death of Ramchandra Laxman Patil his heirs have entered their name to the suit property and to the other properties by their mutual understandings. No partition was taken place in respect of the suit property and to the other properties. Thus, as defendant No.3 by way of sale deed is causing obstruction and interference in the possession of the plaintiff over the suit property, to restrain him, the current application is filed.

Brief case of the defendant no 3 is as under:-

5. Defendant No.3 has objected the current application vide his say at Exh.13. As per the defendant, the suit property and other properties were duly partitioned in between the heirs of Ramchandra Laxman Patil. Out of suit property, property of 1/2 share admeasuring 0.H.8.5 R is belonging to the plaintiff and rest of the property admeasuring 0.H.8.5 R is belonging to the defendants. Therefore, defendants No 1 and 2 have right to sold the same. The defendants No.1 and 2 have sold their total share in the suit property by way of registered sale deed to the defendant No 3.

6. Defendant No.3 is bonafide purchaser of the suit property. His name is entered to the revenue record of the suit property. The defendant is in his peaceful possession of the suit property. Thus, with these submissions the defendant has prayed to reject the application.

7. Heard Ld. Advocate Shri. G.V.Chougale for the plaintiff defendants advocate has not argued on this application.

8. 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 plaintiff has 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 :-

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

10. It is not in dispute that the sale deed is executed in respect of 1/2 portion of the suit property in favour of the defendant No.3 by defendants No. 1 & 2. The plaintiff is claiming that no partition is taken place in between the parties and hence defendants No.1 & 2 have no right to alienate the suit property. Per contra, defendant No.3 has submitted that, there was partition between the parties in respect of the suit property and other properties. Revenue extracts filed on record prima facie shows name of defendant No.3 to the revenue record of suit property i.e to the 7/12 extract and to the 8-A extract. Which prima facie suggests possession of the defendant no 3 over the suit property. These entries are appears to be unchallenged till today.

11. The Plaintiff has filed on record vide Exh.19, certain documents out of which one is old 7/12 extract of the suit property, which demonstrates name of Ambaji Ramchandra Patil and Savaba Ramchandra Patil to the 7/12 extract and 8-A of the suit property. Furthermore, copy of mutation entry No.1038 filed by the plaintiff on record prima-facie denotes the use of word 'Partition' where by separate entries of the name of parties were made to the revenue record of the suit property and to the other properties. It appears that through that mutation entry, name of the parties was entered to the concerned revenue record of the properties. Indeed, it is pleaded by the plaintiff that, no partition is taken place between the parties in respect of the suit property. However, whether the suit property is partitioned or not, is a part of merit and it will be decided at the final stage of the suit.

12. At the moment disputed sale deed is in existence till today. Revenue record prima facie point out possession of defendant no 3 in the suit property. Thus, if at the moment, the defendant is restrained, then the plaintiff may take disadvantage of the same and may cause disturbance to the possession of defendant No.3. At the moment it is unclear as to whether there is partition or not. Thus, in view of the fact that the disputed sale deed is in existence in favour of defendant No.3 and defendant no 3 is in possession of the same, I am of the view that, the plaintiff has failed to establish his prima-facie case, balance of convenience does not lie in his 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:-

13. 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: 29/04/2022.

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