



Milind Mane etc. Vs. Gram. Kasaba Sangaon

CNR - MHKO130005722014

ORDER BELOW EXH. 51 IN R.C.S.No. 120/2014

1. This application is filed by the plaintiffs' against defendant no. 4, under Order 39 Rule 5 and 6 read with section 151 of the Code of Civil Procedure (in short 'CPC').

Facts and arguments on part of plaintiffs' :-

2. According to plaintiff, property situated at Mouje Kasaba Sangaon previous R.S.No. 378 and present Gat no. 523 situated in Anandnagar Colony, having previous village property no. 926 and present property no. 1665 admeasuring 2 R. having measurement East-West length 66 feet and North-South width 33 feet having boundaries well described in the plaint, is subject matter of suit property. (Hereinafter referred as "suit property".)

3. It is pleaded that, the suit property is purchased from LR's of defendant no. 3 by the grand father of these plaintiffs on 31/10/1976 for consideration of Rs.99/- as well as possession of the suit property handed over to their grand father. During the possession grand father of the plaintiffs' has erected house consisting stone, soil and bricks. Thereafter, this suit property succeeded by the plaintiffs. It is averred that, since 1976 the suit property is in possession of plaintiffs. The entry over suit property is yet in existence in the name of predecessor of plaintiffs since last 36 years. Further, the plaintiffs' are paying the taxes and electricity bill of above said property. It is averred by the plaintiffs that, as per the sale deed, the entry in the 7/12 extract was remained to be carried out from the predecessor of the plaintiffs. By taking disadvantage of this fact, the defendant no. 3 with ill-motive transfered the suit property and tried to remove the name of plaintiffs

from Village Panchayat record. According to plaintiffs, defendants tried to dispossess the plaintiffs by taking the possession forcefully. Meanwhile, the suit property being dilapidated the plaintiff made application on 27/03/2014 before Village Panchayat. However, due to pressure the defendant no. 1 and 2 refused to provide any information to the plaintiffs. Therefore, the plaintiffs went before office of Village panchayat on 20/06/2014. It was informed by Grampanchayat office that, defendant no. 3 is insisting upon them to remove their name. At that time, the defendant no. 3 also threatened to plaintiffs to dire consequences and also replied that he has sold suit property to defendant no. 4.

4. Thereafter, the plaintiff again went to the office of Grampanchayat that time, it is noticed by him that, defendant no. 3 sold the suit property to defendant no. 4 by bogus sale deed executed on 20/08/2013. According to plaintiff, after the sale, of year-1976 defendant no. 3 and his father, have no concern with the suit property. Defendant no. 3 and 4 executed illegal sale deed to delete the name of plaintiff from the record of Village panchayat without issuing notice to these plaintiffs. Thus, the plaintiffs have filed criminal complaint case against defendant no. 3 and 4. As consequences to this plaintiffs filed this suit to seek the perpetual injunction against them. Accordingly, on 19/11/2014 interim injunction order is passed in favour of this plaintiff by restraining the defendants from causing disturbance to the peaceful possession of the plaintiff over the suit property. The defendant no. 4 also preferred appeal against that, order vide Civil Appeal No. 320/2014. The said appeal was also dismissed by the Appellant Court. Even thereafter also defendant no. 4 many time caused obstruction to the peaceful possession of plaintiffs'.

5. As per argument of learned advocate of plaintiffs', amongst the plaintiff No. 2 on 02/07/2022, went in suit property in the evening

time. That time, it is noticed by him that, the debris of old house is removed by defendant no. 4 with the aid of JCB machine just prior to 2 days and instantly erected tin shed in form of iron channel, as well as erected cement pole and ready made compound. Further, defendant no.4 has parked his four wheeler and encroached upon suit property. Though the plaintiffs' inform the defendant no. 4 that, injunction is in existence against him thus, to remove the above said construction, however, the defendant no. 4 replied arrogantly and refused to remove the shed and compound and also abused the plaintiffs' in offensive language. The plaintiffs' being apprehended by the threatening of defendant no. 4, he has not lodged the report of the same. According to plaintiffs', though the injunction is running against defendant no. 4, the defendant no. 4 has erected the construction upon suit property. It is pleaded that, the possession of the plaintiffs' is also held in Exh. 5 and in appeal. Therefore, the illegal construction raised by defendant no. 4 is required to be removed from the suit property at the costs of defendant no. 4. Hence, filed this application to remove the shed and compound wall from the suit property by the aid of police.

Say and argument of defendant no. 4 :-

6. Say to this application filed by defendant no. 4 at Exh. 52. Defendant no. 4 specifically denied the contents of application and submitted that, the plaintiffs' threatened the defendant no. 4 to institute false case of atrocity to grab the suit property. According to defendant no. 4, he has not breached any injunction passed by this court or appellate court. According to defendant no. 4, R.S.No. 378 and present Gat no. 523 out of 2 R. is earlier owned by defendant no. 3. Defendant no. 3 executed the sale deed on 20/08/2013 in favour of defendant no.4 vide registered deed no. 1437 for consideration of Rs.1,20,000/-. Since then, the suit property is in possession of defendant no. 4 as owner of that suit property. Further, the name of defendant no. 4 is also appeared in the 7/12 extract as well as mutation no. 8383 is also

carried in the name of defendant no. 4. Further, plaintiffs' has not objected those entries till today. Actual possession is handed over by the defendant no. 3 to this defendant no. 4 on 20/08/2013 by way of sale deed. Thereafter, defendant no. 4 paid the taxes of suit property. It is averred that, the R.S.No.378/Gat No. 523 is agricultural suit property. Therefore, it is does not fall in the ambit of village panchayat. Therefore, village panchayat is not entitled for recover any revenue. Thus, the pleading that suit property is village panchayat property no.1665 is wrong and against the law. It is contended that, it is not disclosed in the plaint that in what manner the name of Rama Ganu Kamble is tagged with the suit property. Further, there is no evidence with the plaintiff to indicate that the suit property is village panchayat property. According to defendant no. 4, the alleged deed executed on 31/10/1976 is not in respect to the suit property, moreover, there is possibility that sale deed may be bogus as well as by that deed, there are no entries carried and appeared in 7/12 extract. Further, nothing is demonstrated by the plaintiffs' that, their predecessor obtained relevant entries in Village panchayat record in respect to the title of that suit property.

7. It is contended that, just to avoid the stamp duty a false deed is executed on 31/10/1976. According to defendant no. 4, the plaintiffs' and their predecessor were never in possession of suit property. Further, the entries in the name of predecessor of plaintiffs' is carried without passing any resolution by defendant no. 1 and 2. Thus, the said entries are wrong and are not binding upon defendant no. 3 and 4. Further, on the basis of deed executed on 31/10/1976 the inference can not be drawn that Village panchayat property no. 926 and present property no. 1665 is the same. It is averred that, now defendant no. 4 became bonafide purchaser of the suit property. Moreover, he has borrowed loan from Dudhganga Gramin Co-operative Society Ltd., Sangaon and also carried out construction by constructing cow shed,

cow dung as well as using it for other utility purpose. According to defendant no. 4, in the year-2020 in the month of October, the roof and the cow shed became dilapidated thus there become possibility of casualty to the livestock. Therefore, defendant no. 4, purchased tin sheets from Darshan Enterprises on 24/10/2020 as well as on 22/10/2020 he has purchased iron channel and pipe from Paramane Traders, Nanibai Chikhali. On 26/10/2020 he has erected shed through the help of I.M. fabrication and planted trees of fig, ficus, basil, guava, papaya, lime, custard apple in the month of November, 2020. Thus, to prevent these trees from damages, he has constructed wall compound by purchasing ready made compound material from Kousthubh Cement Articles, on 11/11/2020.

8. Relying upon above fact learned advocate of defendants argued that, since year-2013 defendant no. 4 is in possession of suit property. He has not disobeyed the order of injunction and is ready to conduct the suit. The learned advocate of the defendant No. 4 put his emphasis over the conduct of the plaintiffs' while commencing the trial. Learned advocate of the defendant no. 4 argued that, after passing order of injunction the plaintiffs' remain absent to proceed with the suit on many occasions, therefore certain adverse order was also passed against him. Now, the plaintiffs' is misusing the order passed below Exh.5 in his favour by threatening the defendant no. 4 to lodged false complaint of atrocity. It is argued that, plaintiffs' is misusing court process. Further, there is no willful disobedience on part of defendants. Thus, application is not maintainable accordingly urged to reject the application.

9. Heard Shri. S.S.Patil learned advocate appearing on behalf of Plaintiffs' and Shri. S.S.Kestikar learned advocate appearing on behalf of Defendant No. 4. 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 plaintiffs' are entitled for directions as prayed in the application ?	:-	..Yes..
2.	What order?	:-	Application Allowed.

:- DOCUMENTS :-

10. The plaintiffs' relied on following documents filed at Exh.54.

1.	Certified copy of assessment extract of suit property of the year 2019-2020 to 2022-2023.
2.	Photo copy of Judgment delivered in Misc. Civil Appeal No. 320/2014 in the Court of Sessions, Kolhapur dated 12/03/2015.
3 – 6.	Photos of suit property (4) dated 02/07/2022.
7 – 8.	Photo copy of complaint filed before Kagal Police Station and Superintendent Of Police, Kolhapur dated 04/07/2022.

11. Learned advocate for the plaintiffs placed his reliance on following case laws at Exh. 58:-

1.	Meera Chauhan Vs. Harsh Bishnoi and another, (2007) 12 Supreme Court Cases 201.
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12. The defendant no. 4 relied on following documents filed at Exh.56.

1.	Original copy of bill of Darshan Enterprizes dated 24/10/2020.
2.	Original copy of bill of Paramane Traders dated 22/10/2020.
3.	Original copy of bill of I.S.Fabrication dated 26/10/2020.
4.	Original copy of bill of Plant Library dated 02/11/2020.

5.	Original copy of bill of Kousthubh Cement Articles dated 11/11/2020.
6 – 8.	Photos of suit property (3).
9.	Certified copy of 7/12 extract of Gat no. 523.
10.	Photo copy of sale deed in favour of Sunil Devadkar dated 25/05/2016.
11 – 12.	Original copy of tax receipt paid by defendant dated 20/05/2014 & 10/06/2015.
13.	Original copy of sale deed dated 20/08/2013.

13. Learned advocate for the defendant no. 4 have filed witnesses affidavits of Sunil Suresh Devadkar & Baburao Ganapati Khade at Exh. 57 & 59 respectively.

:- REASONS :-

As to Points No. 1 & 2 :-

14. Perused the record. Heard the learned advocate of the both the parties.

15. It is admitted that, Exh. 5 is allowed in favour of the plaintiff partly, as well as appeal against that, order is dismissed and defendant no. 4 has not preferred appeal from that order. Admittedly, four boundaries referred by the plaintiff are not specifically denied by defendant no. 4. The averments in the say of defendant no. 4 is that, suit property is not subject to assessment of village panchayat whereas it comes under agricultural in nature. However, this facet has been dealt in the Exh. 5 and in appeal arising there from. The finding to order passed below Exh.5 also remain intact in appeal thus, the injunction is in existence against the defendant no. 3 & 4.

16. So far as contention of defendants as to conduct of plaintiff

while conducting the trial is concern, the defendants could have made application before this court to vacate the injunction, if according to defendants there is misuse by the plaintiffs' of order passed below Exh.5. However, no such remedy is availed by the defendant no. 3 and 4 to vacate the injunction existing against them. Beside that, main defence is of cause of action as to application. According to defendant no. 4, the cause of action stated in the application is not genuine. It is pleaded that, the defendant no. 4 has erected the construction on 26/10/2020 by purchasing article required for such construction. It is averred that, as the plaintiffs' is not in the possession of suit property, there is no willful default to the order of injunction as earlier shed become dilapidated, hence, it was need of time to construct the shed and compound. Moreover, it is argued that, the plaintiffs' have not amended the suit to obtain the possession of the suit property and with intention to prolong the trial this application is filed.

17. Now, considering the fact of construction whether it was need of time, the same is required to be dealt in the Civil miscellaneous proceeding which is separately filed by the plaintiffs' against the defendant by way of trial. Admittedly, in this matter defendant no. 4 has not denied the construction of shed and compound. Neither before such construction, the defendant no. 4 obtain any permission from court nor vacated the injunction order. Thus, what was the date of construction, when cause of action arose is immaterial while deciding this application.

18. Considering the above circumstances, the earlier orders can not be ignored, as there was specific direction not to change the nature of suit property. The effect of order of the court against the defendant no. 4 is in existence. The affidavit filed on record are of after the decision of date of appeal arising out of order of Exh. 5. Thus, it may helpful to the defendant no. 4 in later part of trial during evidence.

Now, as the construction over suit property is admitted which was erected after Misc. Civil Appeal No. 320/2014, thus this court is of the opinion that, the said construction is required to be removed at the costs of defendant no. 4 himself.

19. In the case of **Meera Chauhan Vs. Harsh Bishnoi and Another, (2007) 12 Supreme Court Cases 201**, it is held by Hon'ble Supreme Court that,

“inherent powers must be exercised only in exceptional circumstances for which CPC lays down no procedure.”

The case law further laid down that, Court can put back the parties in the same position as they stood prior to issuance of the injunction order. In the present case the prima facie possession of this plaintiffs' is held by concurrent finding. Thus, considering ratio laid down in above case and as there is no attempt by the defendant no. 3 & 4 to vacate the injunction and the construction upon suit property being without permission of this court, such construction is required to be removed at cost of defendant no.4. Accordingly, point no. 1 is answered in the affirmative and for point no. 2 following order is passed.

ORDER

1. The application (Exh.51) is allowed.
2. Defendant no. 4 shall remove the tin shed and compound wall construction from the suit property within 45 days from the date of this order at the costs of himself.
3. The prayer of plaintiffs as to police aid shall be considered after lapse of above period.

Kagal
Date:- 10/10/2022

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