



R.C.S.No. 64/2022

Rajaram Barwade Vs. Ganapati Sutar

CNR - MHKO130006642022

ORDER PASSED BELOW EXH.05
(Dt. 03/05/2023)

1. This application is filed by the plaintiff against defendant, under Order 39 Rule 1 and 2 and under section 151 of the Code of Civil Procedure (in short 'CPC').
2. According to the plaintiff, Gat No. 156 admeasuring area of 0 H. 41 R., out it having joint ownership of plaintiff to the extent of 0 H. 10.68 R. situated at Mouje Bhadgaon, Tal. Kagal, Dist. Kolhapur well described in the plaint is subject matter of suit. (Hereinafter referred as “suit property”).
3. The gist of application is to restrain the defendant from causing disturbance to the peaceful possession of plaintiff upon suit property.
4. Defendant filed his say to this application at Exh.16 and specifically denied the contents of Exh.5.
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.O.S.Diwan learned advocate appearing on behalf of plaintiff and learned advocate Shri.K.D.Jadhav appearing on behalf of defendant. 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?	:-	Application is rejected.

:- DOCUMENTS :-

7. The plaintiff relied on following documents filed at Exh.3.

1.	Certified copy of 7/12 extract of Gat No. 156 dated 05/04/2022.
2.	Certified copy of 8-A extract of Khate no. 388 dated 05/04/2022.

8. The plaintiff has filed affidavits of witnesses Dyandev Sakharam Barwade and Ananda Ramchandra Barwade respectively at Exh.17 & 18.

9. The defendant has relied on following documents filed at Exh. 23 & 25.

1.	Certified copy of registered sale deed no. 338 executed on 01/08/1995.
2.	Original copy of notice sent to defendant by learned advocate of plaintiff dated 08/03/2022.

10. The defendant has filed affidavits of witnesses Bapu Nana Barwade, Smt. Tai Dattu Barwade and Smt. Yesubai Sadashiv Barwade respectively at Exh.19, 20 & 21.

Facts and Argument on behalf of plaintiff :-

11. According to plaintiff, the suit property is ancestral property of plaintiff and he is in possession of suit property since long time yielding sugarcane, soyabean, paddy etc. in the suit property. The name of this plaintiff is appearing in occupant column of 7/12 extract and he is cultivating the property with other co-sharer as per their convenience. According to plaintiff, defendant caused obstruction to his peaceful possession on 10/04/2022 and also threatened not to cultivate the suit property. Further, he has also made bold statement that, he has purchased the suit property and denied the rights of plaintiff. Hence, filed this application.

12. According to learned advocate of plaintiff, he is owner of suit property and defendant is no way concern with the suit property. The defence as to wrong Gat number is availed by the defendant, however, there is no necessary pleading in the written statement, even though, the defendant has knowledge about wrong Gat number. It is argued that, witnesses Dnyandev Barwade and Aanada Barwade deposed the fact of possession of the plaintiff, thus, the plaintiff has prima facie case. It is argued that, if the application is rejected, the plaintiff may suffer irreparable loss, contrary if the application is granted, no loss will be suffer by defendant. Hence, argued to allow this application. The learned advocate of plaintiff relied on 7/12 extract of suit property and evidence affidavit filed below Exh. 17 & 18.

Argument & Say on behalf of Defendant :-

13. The learned advocate of the defendant specifically denied the contents of application by filing his W.S. below Exh. 16. According to defendant, this false application and suit is filed by the plaintiff. As per defendant, he has purchased the property from Gat

no.156 from Sadu Nana Barwade, Bapu Nana Barwade, Mahadev Nana Barwade, Tanubai Annappa Barwade, Balu Sakham Barwade, Dyandev Sakham Barwade, Namdev Joti Barwade, Balu Joti Barwade, Appa Ganu Barwade by way of registered sale deed which was executed by this plaintiff being Power of Attorney holder of above referred persons vide deed no.338/1995 executed on 01/08/1995. Since then, defendant is in possession of suit property.

14. It is argued that, at the time of purchase of the suit property it was barren. Further, this defendant by incurring expenses enhance the fertility of the suit land. According to this defendant, at the time of execution of sale deed inadvertently in the sale deed wrong Gat no. 143 is referred, whereas sale deed is executed in respect to Gat no. 156. Therefore, defendant issued notice on 08/03/2022 to the plaintiff. After issuance of notice by the defendant, this plaintiff filed suit against this defendant and at that time the fact wrong Gat number in the sale deed, is acknowledged by this defendant.

15. Further, this defendant approached to the other co-sharer and requested them for rectification of Gat number in the sale deed, from Gat no. 143 to Gat no. 156. Now, the plaintiff with after thought and due to development made by the defendant in the suit property, instituted this false suit to grab the suit property. According to defendant, other co-sharer are ready to rectify the instrument executed on 01/08/1995. However, only this plaintiff is opposing such rectification.

16. Further, according to this defendant he is also in motion to file appropriate proceeding in respect of rectification of instrument. According to this defendant, there are several share

holder in Gat no. 156 and those are not party to suit, hence, suit is barred by non-joinder of necessary party. According to this defendant, prior to this suit defendant became owner of Gat no. 156 to the extent H 0.14 R. by way of registered sale deed. It is contended that, on 06/03/2022 plaintiff issued false notice and this fact is brought into the notice of eminent person of village, thereafter, the plaintiff himself withdraw that notice.

17. According to defendant, there is no cause of action to the application and suit. It is argued that, this defendant is in possession of suit property. Further, plaintiff has not proved his possession by way of other documentary proof. It is further argued that, co-sharer from Gat no. 156 also filed their affidavit to falsify the contents of plaint. It is argued that, there is no prima facie case and balance of convenience in favour of plaintiff, rather if injunction is granted, the defendant may suffer irreparable loss, accordingly, urged to reject the application.

:- REASONS :-

As to Points No. 1 to 3 :-

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

19. Prima facie case means case of injury and it is the duty of plaintiff to prove his case of injury. The plaintiff has not disclosed the four boundaries of suit property. Considering, 7/12 extract there are other co-sharers in the suit property and those are not party to this suit. Further, other co-sharer Bapu Nana Barwade is not supporting the contents of plaint. Rather, other co-sharer and relative who have filed affidavit below Exh. 19 to 21 supported the

defence of the defendant that, there is mistake in sale deed as to Gat number. Considering, these facts though there is no separate suit or defence of rectification of instrument by way of counter claim by the defendant, the theory of rectification of instrument can not be neglected. So far as interim application is concern, the plaintiff has not disclosed that, by what mode the defendant is causing obstruction to his peaceful possession. Further, it is not disclosed in the application that, this defendant is adjacent owner to suit property from certain boundaries. More to that, absence of other co-sharers to support the case of plaintiff, indicates that, there is no obstruction to the peaceful possession of plaintiff at the hands of defendant.

20. The affidavits filed on record by plaintiff of witnesses Dyandev Barwade and Ananda Barwade at Exh. 17 & 18 respectively, prima facie does not disclose the fact as to obstruction at the hands of defendant. Rather, the affidavit filed on behalf of defendants in support of defendant, prima facie strengthen the defence of defendant. Therefore, if injunction is granted in favour of plaintiff, that may be misuse by plaintiff as well it would cause inconvenience to the defendant. Beside that, the defendant has also issued one notice to the plaintiff on 08/03/2022 in respect to obstruction caused by this plaintiff to this defendant, to his Gat no. 159. This prima facie indicates that, due to alleged disturbance by plaintiff to the defendant to other Gat number, the dispute is started between the parties. Consequently, even though the plaintiff is presumed to be the owner of the suit property, the defendant is also claiming his title through sale deed. Further, the obstruction fact as to disturbance are not specific and clear, and witnesses of the plaintiff do not states any obstruction at the hands of defendants on particular side of the suit property on particular date.

21. Thus, there appears no prima facie case in favour of plaintiff. Hence, plaintiff is not entitled for relief of interim injunction. Rather, if injunction is granted, the defendant may suffer inconvenience. Accordingly, point no. 1 to 3 are answered in the negative. In the result, for issue no. 4 following order is passed.

ORDER

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

Kagal.
Date:- 03/05/2023.

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