



**ORDER BELOW EXH. NO. 22 IN R.C.S. NO.
143/2021**

Raju Dattatray Patil Vs. Yashwant Dattajirav Ghatage

By way of this application, plaintiffs seek ad-interim application so as to restrain the defendants from disturbing or interfering with the possession of the plaintiffs in/over the suit property. Hence, plaintiff prayed for status-quo.

02. The case of the plaintiffs is that, suit property is situated at Gorambe, Tal. Kagal, Dist. Kolhapur having Gat No. 374 with area 3H. 54.1R, पो.ख. 0H. 04R and it's old survey being No. R.S No.. 44/1 and 44/2. Plaintiffs have raised contention about the suit property being subject-matter of Bombay Merged Territory Miscellaneous Alienations Abolition Act, 1955 and thereafter, Government became possessor and defendant No. 1 have become licensee. Defendant No. 1 have not paid re-grant amount hence, the suit property went to Government on 01/08/1965. Plaintiffs further contends that, predecessors of plaintiffs i.e. Dadu Manku Patil, Bapu Daulu Patil, and Ishwara Gopala Patil are tenants in the suit property even before the year of 1950. The suit property was in the possession of the predecessors of the plaintiffs and after them, came to the possession of the plaintiffs. Tenancy proceedings also took place between plaintiffs and defendant No. 1. However, tenancy findings went against the plaintiffs in two forums but plaintiffs have preferred appeal against it. Thereafter, by way of the decision of the Government dtd. 10/03/2000, suit property was approved to be

given to the tenants in possession on the payment of the appropriate amount. Thereafter, it was obligatory on the defendant No. 1 to pay the amount of re-grant till 31/07/1965 however, the same was not done.

03. Plaintiffs further contend that civil suit bearing No. 42/2010 was also adjudicated between plaintiff and defendant No.1. However, defendant No. 1 has illegally sold the suit property to defendant No. 3 and 4 by way of registered sale-deed bearing No. 1282/2021 and 1283/2021 respectively dated 29/06/2021. Thus, defendants are now trying to obstruct the possession of the plaintiffs in/over the suit property. Hence, plaintiffs are constrained to institute the present suit claiming the reliefs of perpetual injunction as well as declaration about the sale-deed bearing No. 1282/2021 and 1283/2021. As the present suit would take time to come its conclusion, hence, plaintiffs are constrained to seek ad-interim relief in the form of status quo.

04. Defendant No. 1 to 7, 9 to 13 have filed the written statement below Exh. No. 24 and defendant No. 3, 4, 5, 6 and 8 have filed the written statement as well as say to the interim application below Exh. No. 25. On perusal of their say, it appears that, they have resisted the case of the plaintiffs and denied that, plaintiffs were tenants of predecessors of defendants. They have contended that the suit property is the ancestral property of defendant No. 1. They further contend that, tenancy proceedings No. 38/2002 was conducted and it was found that, plaintiffs and their predecessors are not tenants of defendant No. 1. Plaintiffs

have filed appeal before Sub-Divisional Officer, however, the appeal have also been dismissed. Plaintiffs have approached appellate authorities against the order of the Sub-Divisional Officer. However, there has been no stay on the earlier decisions. It is also true that, defendants have instituted the civil suit bearing No. 42/2010 against the plaintiffs. Interim application below Exh. No. 5 was adjudicated and it was concluded that, defendant No. 1 is in the possession of the suit property. Appeal was preferred by the plaintiff and it was also rejected. Thus, it is clear that, suit property is not in possession of plaintiffs. Defendants further contend that, Dadu Manku Patil, Bapu Dolu Patil, Ishwara Gopala Patil were tenants of the suit property before the year of 1968 and proceedings u/s. 32(G) of the Maharashtra Tenancy and Agricultural Land Holdings Act, 1948 was conducted and the tenants have denied to purchase the tenancy property and accordingly, order was passed on 05/07/1968 and thereafter, relevant orders were passed u/s. 32(P) and the suit property was given in the possession of the defendants as per *panchnama* on 18/02/1970. Accordingly, plaintiffs have suppressed material facts from the Court. Civil suit bearing No. 42/2010 have been dismissed for default. Defendant No. 3 to 6 and 8 have verified the names of the defendant No. 1 to 7, 9 to 13 on the revenue records and also, took the proper search and accordingly, purchased the suit property. Then, defendant No. 3 to 6 and 8 have entered into the possession of the suit property as per registered deed bearing No. 1282/2021 and 1283/2021 respectively. Thereafter, relevant entries have been effected in the revenue records of the suit property. Thereafter, defendant No. 3 to 6 and 8 are cultivating the

suit properties. Thus, in view of the above aspects, the present application of the plaintiffs deserve to be rejected.

05. Perused the application and the say. Heard both the sides both the learned advocates for plaintiffs and defendants have reiterated the contention in their pleadings in their arguments. Perused the documents filed on record by both the parties.

06. The case of the plaintiff is that they are in the possession of the suit property. Firstly, they have taken the contention of the Bombay Merged Territory Miscellaneous Alienations Act,1955 and due to the failure of the defendant No. 1 to pay the amount of regrant, Government became the owner. For that purpose, plaintiffs have placed on record the documents of revenue records i.e. Village Form No. 7 and 12 below Exh. No. 3/2 and 3 wherein it appears that, some proceedings took place under the said act. Plaintiffs have contended that, Dadu Manku Patil, Bapu Daulu Patil, and Ishwara Gopala Patil are the cultivators in the suit property. But, as per the Village Form No. 7 and 12 placed on record below Exh. No.3/2, Dadu Manku Patil, Gopala Ramaba Patil, and Bapu Balu Patil are shown as the cultivators in the suit property and as per Village Form No. 7 and 12 of the suit property below Exh. No. 3/4, Siddu Dadu Patil, Balu Dadu Patil, Narayan Bapu Patil, Balu Ishwara Patil are shown as cultivators in the suit property. However, it is pertinent to note that, these, documents are of the year 1956-57 then, 1965 and 67 and 2010-11 respectively. These documents do not reflect the recent position. It is also pertinent to note that, the name of predecessors of all the plaintiffs or for that matter, some of the

plaintiffs are not reflected in the Village Form No. 7 and 12 of the suit properties. Hence, it is very difficult to arrive at the conclusion relying on these documents.

07. Then, plaintiffs have raised the contention that they are tenants in the suit property since the year 1950 and they are tenants of defendant No. 1. However, Village Forms No. 7 and 12 placed on record by them do not reflect any such position. Admittedly, tenancy proceedings took place plaintiff and defendant No. 1. It is pertinent to note that both the parties have not placed on record documents relating to the tenancy proceeding. Plaintiffs have only placed on record the appeal preferred before Commissioner of Pune, however it is admitted by both the parties that, it has been held by two forums i.e. Tenancy Court and Sub-Divisional Officer that, plaintiff are not tenants of defendant No. 1. It appears that, plaintiffs have not been able to show the relationship of tenancy in suit property with defendant No. 1.

08. Admittedly, civil suit bearing No. 42/2010 was instituted by defendant No. 1 against plaintiff. However, plaintiffs have merely contended that, suit was dismissed however defendant No. 1 has contended that interim application below Exh. No. 5 in R.C.S. No. 42/2010 have been adjudicated on merits and it was found out that, the defendant No.1 is in possession of the suit property. Plaintiffs have not even referred to this interim application nor they have placed on relevant documents placed on record. But, even defendant No.1 has also not placed on record all the relevant documents on record. Hence, at this juncture it is very difficult to

arrive at the conclusion.

09. Defendants have also resisted the present suit by filing their common say to the interim application and the written statement below Exh. No.24 and 25 respectively. However, they have not filed the relevant documents in support of case. Hence, adjudication over the interim application below Exh. No. 5 needs to be done after considering the case of the both the parties as well as documents forwarded by both the parties. Coming to the conclusion, for the purpose of grant ad-interim injunction, plaintiffs were not able to prove the prima-facie case about their possession in/over the suit property. Accordingly, this application is rejected. Hence, the following order is passed.

ORDER

1. Application is rejected.
2. Both the parties are directed to produce the relevant documents on record and to argue on the interim application below Exh. No. 5.
3. There is no special circumstances to award costs of this application, hence, costs in cause.

Date : 22/02/2022
Place : Kagal.

(Katkar Vijaya N.S.)
Jt. Civil Judge, Junior Division,
Kagal.