

**R.C.S.No. 136/2023**

Tanaji Patil Vs. Kalpana Sase etc.

CNR - MHKO130008882023

ORDER PASSED BELOW EXH.05**(Dt. 10/10/2024)**

1. This application is filed by the plaintiff against defendants, under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure (in short 'CPC').

2. According to the plaintiff, property situated at Sake, Tal. Kagal, Dist. Kolhapur having property Gat no. 1299 admeasuring area of 0 H. 13.00 R., out of it 0 H. 03.95 R. well explained in the suit and application, is subject matter of this application (hereinafter referred as "suit property"). The gist of application is to restrained the defendants from causing disturbance, obstruction and interference to the peaceful possession of suit property.

3. Defendant no. 1 & 2 have filed their say to this application at Exh.11 and specifically denied the contents of Exh. 5.

4. Heard learned advocate Shri. S.S.Kestikar appearing on behalf of plaintiff and learned advocate Shri. M.H.Patil appearing on behalf of defendant no. 1 & 2. From the pleading 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?	:-	Yes.
2.	Whether balance of convenience lies in favour of plaintiff?	:-	Yes.
3.	Whether plaintiff would suffer	:-	Yes.

	irreparable loss if injunction is refused?		
4.	What order?	:-	Injunction is allowed.

:- DOCUMENTS OF PLAINTIFF :-

5. The plaintiff relied on following documents filed at Exh.3 which includes 7/12 extracts and copy of plaint of R.C.S.No.88/2021 dated 03/05/2021 etc. The plaintiff has filed affidavits of witnesses namely Tukaram Laxman Patil, Suresh Ananda Patil and Vasant Shankar Patil respectively at Exh. 15, 18 & 19. Further, the learned advocate of plaintiff has relied on following case law which is filed at Exh. 20.

1.	Hon'ble Supreme Court, Civil Appeal No. 18377/2017, Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar And Ors., decided on 04/07/2018.
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:- DOCUMENTS OF DEFENDANT NO. 1 & 2 :-

6. The defendant no. 1 & 2 are relied on following documents filed at Exh. 17 which includes complaint lodged against plaintiff by defendants dated 12/10/2021, extract of Gat No. 1299 & 699 situated at Mouje Sake and photos of suit property etc. The defendants have filed affidavits of witnesses Dilip Dattatray Shetake and Bhikaji Dinkar Mangale respectively at Exh. 13 & 14.

:- REASONS :-

As to Points No. 1 to 3 :-

7. Perused the record. Heard learned advocates of both the parties.

8. Pendency of one another suit R.C.S.No. 88/2021, filed by these defendants against this plaintiff pending before this court is not disputed. Further, the plaintiff in this matter entirely denied

unregistered agreement to sale allegedly executed on 07/09/2018 which is the base of the R.C.S.No.88/2021. Admittedly, the ownership of plaintiff is not disputed and nature of document referred in the W.S. is unregistered. Further, the defendant being plaintiff in R.C.S.No. 88/2021 has not proceeded with the temporary injunction application Exh.5 in that suit. The defendant came with the case that, he is in possession of suit property on the basis of agreement to sale executed on 07/09/2018. Concerning the defence of possession on the basis of unregistered agreement to sale, the said document prima facie has no effect for purpose of Section 53-A of Transfer of Property Act.

9. Therefore, without going into much detailed pleading of parties, with certain incidence as to alleged criminal force coupled with incident of intimation, against plaintiff indicates obstruction at the hands of defendants. Further, his case is supported by affidavit of Suresh Patil and Vasant Patil file below Exh.18 & 19. So far as affidavit of Dilip Shetke and Bhikaji Mangle, respectively filed below Exh. 13 & 14 is considered. Those are in respect of execution of alleged deed, which is require to be considered at the time of merit of the case. Apart from that, there is no other prima facie proof with the defendant to indicate his lawful possession upon suit property. Thus, having regard to the undisputed title of the plaintiff upon suit property, the plaintiff has prima facie case of injury. Consequently, any obstruction at the hand of defendant would result into irreperable loss, rather if injuction refused the plaintiff may suffer inconvenience.

10. Consequently, relying on the facts of the case, with ratio laid down in the judgment of Hon'ble Supreme court passed in Civil

Appeal No. 18377/2017, Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar and ors., decided on 04/07/2018 filed on behalf of the plaintiff, this application is decided summarily by using discretion in favour of plaintiff. Accordingly, issue no. 1 to 3 answered in the affirmative and for issue no. 4 following order is passed-

ORDER

1. The application (Exh. 5) is allowed.
2. Defendants are temporarily restrained from causing disturbance, obstruction, interference to the peaceful possession of plaintiff upon suit property, in any manner till the decision of suit.
3. No order as to costs.

Kagal.
Date:- 10/10/2024

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