

Order Below Exh.13 in Regular Civil Suit No.187/2015.

1. The plaintiffs have filed the present application under Order 39 Rule I of the Code of Civil Procedure praying the relief of the temporary injunction against the defendants.

2. **The plaintiffs contention in the present application is as under :-**

The plaintiffs have filed this present suit praying the relief of perpetual injunction against the defendants. At Kagal, Tal. Kagal, Dist. Kolhapur, in Jaysingrao Park City Survey No.2144, out of it Plot No.37 having length East-West :- 120 foot, width – Sough-North :- 60 foot i.e. total 7200 square foot. Out of it 1800 square foot i.e. East-West :- 30 foot and South-North :- 60 foot having the four boundaries on East :- out of the same property the defendant No.1's shares land, West :- out of it defendant No.2's land, South :- public road and North :- Shri. Bhosale's property, is the subject matter of the dispute. Hereinafter, called as a suit property.

Present plaintiff No.1's husband and plaintiff No.2's father Ashok Gundu Dhawan, defendant No.1, defendant No.2, defendant No.4 and 5's ancestor Deepak and defendant No.6 to 9's ancestor Pramod are the real brothers. Defendant No.3 is the wife of the defendant No.2. Ashok Dhawan demised on 06/12/2007. Plot No.37 of City Survey No.2144 is the property purchased by defendant No.1's father-in-law Gundu Dhawan from the original owner Shrimant Jaysingrao Ghadage, Kagal on 12/02/1970

through a registered sale deed. After the purchase, he was the owner and possessor of the suit property. In the said purchased property Gundu Dhawan made the construction of the house and some portion remained empty. In regard of suit property City Survey No.2144 and other properties, an registered partition deed got executed between the plaintiffs ancestor Ashok and defendants on 06/12/2004. In the said partition, suit property was allotted to the plaintiffs ancestor Ashok. The share allotted to the plaintiffs ancestor includes three storeyed house building. Out of Plot No.37 on extreme East sides 1800 square foot portion is given to the defendant No.1, adjacent to it 1800 square foot portion given to the share of the plaintiffs ancestor and adjacent to the West 3600 square foot portion was given to the defendant No.2's share. Thus, on 06/12/2004's registered partition deed, present plaintiffs ancestor become the owner of the suit property. After the demise of Ashok, present plaintiffs became the legal owners of the suit property. As defendant No.1 is the brother-in-law of the plaintiffs and there was good relations between plaintiffs with him, plaintiffs permitted defendant No.1 to reside and use some portion of the suit property. In the suit property on the ground floors five rooms are been used by the defendant No.1 with the previous permission of plaintiffs. The second floors five rooms are been given on the rent by the plaintiffs to the various persons. Having such a position, the defendant No.1 without any right thrown out the tenants residing in the plaintiffs owned rooms. In that regard the plaintiffs have given Police complaint into the Kagal Police Station. The

defendants are noway related to the suit property. Present plaintiffs are the owners of the suit property. The defendant No.1's possession of five rooms of the ground floors present into the suit property is without any right and the same is illegal. Hence, the plaintiffs constrained to file this present suit for the recovery of possession of those rooms from the defendant No.1. After filing of this suit and after filing the written statement by the defendant No. 1 to 3, on 28/02/2016, the defendant No.1 to 3 tried to make the lock to the rooms which are possessed by the plaintiffs into the suit property. On the first floor of the suit property house building, on the second floor in the five rooms and on the ground floor three rooms, present plaintiffs are the owner and possessor. Now, the defendants are trying to thrown out the plaintiffs from the possession of those rooms. The defendants are trying to grab those rooms illegally. The plaintiffs have *prima facie* case, balance of convenience lies in their favour and if the defendants are not restrained from obstructing the plaintiffs possession, it will create irreparable loss to the plaintiffs. Thus, on these ground, plaintiffs prayed that the defendant No.1 to 3 be restrained from disturbing the plaintiffs peaceful possession into the three rooms on the West side on the ground floor, the whole first floor and on the second floor five rooms in the suit property till the final decision into the suit.

The plaintiffs in support of their pleading have filed the following documents :-

1. City Survey No.2144, 2083, 3400's extracts.

2. Copy of registered partition deed.
3. Sale deed.
4. Photographs.
5. Complaint lodged by the plaintiff into the Kagal Police Station.
6. Affidavits.
7. Payment receipts of the bills of Kagal Nagarpalika.
8. Electricity bills.
9. The bill of Shree Sai Darshan Industries and Fabricates.

3. On the other hand, the defendants have filed their say at Exh.19 denied contents into the application and objected the same. The defendants submission are as under :-

The plaintiffs have no relations with the suit property. The partition deed alleged by the plaintiffs is itself illegal. Suit property was never and is not in the possession of the plaintiffs. There is no cause of action arose to file the present application. The whole suit property is into the possession of the defendant No. 1 since last 30 to 35 years as of legal heir right. Only to grab the suit property the present false suit is filed against the defendants. The defendant No.1 himself on his own expenses made the construction of third floor into the suit property. The plaintiffs are not into the possession of any suit property rooms. There is an grocery shop and an iron shop into the suit property and on which the defendant No.1's whole family depends. The plaintiffs on

various occasions came to the house of the defendant No.1 and abused him and his family and also threatened to kill. In that regard complaint is filed into the Police Station. If the injunction is granted against the defendant No.1, he will suffer irreparable loss. There was no partition made between the defendant No.1 and the plaintiffs ancestor. Therefore, on these ground, prayed to reject the application.

The defendants in support of their pleading have filed the following documents :-

- 1] Photographs.
- 2] Complaint lodged at the Police Station, Kagal.
- 3] Receipts of bills of the Kagal Nagarpalika paid by the defendant No.1.
- 4] Affidavits.

4. After going through the material available on the Court record, following points arises for my consideration with its findings and reasons given below.

No.	Points	Findings
1.	Whether there is <i>prima facie</i> case in favour of the plaintiffs ?	Yes.
2.	Whether the plaintiffs proves that, the balance of convenience lies in their favour ?	Yes.
3.	Whether the plaintiffs proves that, the irreparable loss will cause to them, if the	

	temporary injunction is not granted in their favour and against the defendant No.1 to 3 ?	Yes.
4.	Whether the plaintiffs are entitled to relief of the temporary injunction as prayed ?	Yes.
5.	What order ?	As per final order.

Reasons :-

5. Heard the learned Advocates for the plaintiffs and the defendants at length.

As to the Points No.1 to 5 :-

6. Prior to dealing with this application, I will like to prefer the relevant provision relating to the temporary injunction contained in the Order 39, Rule I of the Civil Procedure Code.

“Order 39 Rule I of Civil Procedure Code :- Cases in which temporary injunction may be granted :— Where in any suit it is proved by affidavit or otherwise

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

[(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.”

7. The admitted position is that the relationship between the plaintiffs and the defendants is not in dispute. It is also not in dispute that present plaintiffs are the legal heirs of deceased Ashok Gundu Dhawan.

8. The learned Advocate for the plaintiffs argued that Plot No.37 out of City Survey No.2144 is the purchased property of plaintiff No.1' s father-in-law Gundu Krushnath Dhawan. In that respect plaintiffs have adduced some documents. Gone through the same. The plaintiffs have adduced sale deed dated 12/02/1970. The same mentions purchase of Plot No.37 by the plaintiffs and the defendants ancestor Gundu Dhawan. Perused the City Survey extract the same also mentions Gundu Dhawan's name into it. Moreover, the defendants have not denied that the same is purchased property of Gundu Dhawan. Thus, the plaintiffs have able to prove that Plot NO.37 out of City Survey No.2144 is a purchased property of the plaintiffs and the defendants ancestor Gundu.

9. The learned Advocate for the plaintiffs argued that after the demise of Gundu Dhawan, an registered partition deed got executed between the plaintiffs ancestor Ashok and present defendants on 06/12/2004. The same partition deed is denied and objected by the defendants. Gone through the said registered partition deed produced by the plaintiffs. The same is executed between present plaintiffs ancestor Ashok and present defendants. In the same out of City Survey No.2144, 87.9 square meter portion is given to the share of present plaintiffs ancestor Ashok. The learned Advocate for the defendants raised objection that only the open space portion is given to the share of plaintiffs and not the constructed building. If it was only the open space area given to the share of the plaintiffs, the same must have been mentioned into the deed itself. But the same is not mentioned. In the partition deed itself it is mentioned that all the house and open space properties are been divided and nothing remained to be separated. The defendants have merely denied execution of partition deed. That itself not sufficient enough unless the defendants come up with the specific defence impeaching the execution of partition deed. The partition deed produced by the plaintiffs is an registered document. At this primary stage the same needs to be relied on and accepted as it is. In the partition deed shares of the legal heirs of Gundu Dhawan are been separated. As per the division of shares possession of every heir is given. As per the partition deed the mutation of the plaintiffs ancestor Ashok and present defendants name is made on the city survey extract. Moreover, the

defendant No.4 has admitted the contents and her signature over the partition deed. Considering all these aspects the plaintiffs have *prima facie* able to prove that suit property came to their share in the partition and they are the owners of the suit property.

10. The learned Advocate for the plaintiffs argued that into the suit property, the ground floor rooms have been given for the use to the defendant No.1, as the relations between the plaintiffs and the defendant No.1 was co-ordinal. The plaintiffs are into the possession of three rooms on the West on the ground floor, whole first floor and five rooms on the second floor into the suit property building. The five rooms on the second floor were given on the lease by the plaintiffs. The plaintiffs are regularly paying the electricity bill, Nagarpalika taxes of the possessed rooms into the suit property. Having such a position, the defendant No.1 to 3 are trying to dispossess and disturb the plaintiffs possession into the suit property. In that regard the defendant No.1 has forcefully taken out the tenants from the five rooms on the second floor. The defendants have denied allegations of obstruction to the plaintiffs possession. The learned Advocate for the defendants submitted that there was no Kabjepatti prepared to show that possession of the suit property is given to the plaintiffs. On perusing the registered partition deed, the same specifically mentions handing of the possession to the respective heirs. In such a situation, where the partition deed itself mentions handing over of the possession, there is no need for a preparation of separate Kabjepatti. Perused

the documents produced by the plaintiffs. The plaintiffs have produced the tax receipts of bills of Kagal Nagarpalika and also electricity bills. The same mentions present plaintiffs and their ancestor name over it. The bills produced shows that the plaintiffs have paid the same. Moreover, the defendant No.4 has filed her affidavit at Exh.21. In which she has admitted the plaintiffs possession into the suit property as stated by the plaintiffs. She admitted and upheld the contents into the partition deed. The learned Advocate for the defendants during his oral argument admitted that the plaintiffs have given five rooms on the lease, he used to collect the rent of the said rooms and thereafter to hand over the same to the plaintiffs. This admission of the defendants shows that into the five rooms of the second floor the plaintiffs had kept tenants. Thus, the documentary evidence, the oral admission given by the defendants and the oral evidence of the defendant No. 4, at this primary stage shows that the plaintiffs are into the possession of the suit property. Thus, the oral and documentary evidence adduced by the plaintiffs is sufficient enough to prove the plaintiffs possession into the suit property.

11. Now, it needs to be seen whether the defendants are tried to obstruct the plaintiffs possession into the suit property. The plaintiffs have produced the copy of Police complaint registered against the present defendants. Kagal Police Station has registered non cognizable offence bearing No.206/2015 against the defendants on the complaint of the present plaintiffs. The

complaint lodged is in respect of disturbance to the suit property rooms to the plaintiffs by the defendants. Thus, this Police complaint *prima facie* shows obstruction to the plaintiffs possession into the suit property by the defendants. On considering the above discussion, it *prima facie* established that suit property is the property came to the share of the plaintiffs into the partition, the plaintiffs are into the possession of the suit property and the defendants are trying to disturb the plaintiffs possession into the suit property. As the plaintiffs are able to prove *prima facie* case in their favour, in such a situation, their possession into the suit property needs to be protected. Thus, in order to avoid further complications and multiplicity into the suit till the final decision, the plaintiffs possession needs to be protected.

12. The plaintiffs are able to satisfy the ingredients of the Order 39 Rule I of the Civil Procedure Code. After considering all above discussion, at this primary stage, there is material evidence on the record to support the plaintiffs pleading. The plaintiffs have proved that they have *prima facie* case, balance of convenience lies in their favour and they will sustain irreparable loss if the temporary injunction is not granted.

13. Thus, I answer point Nos.1 to 4 in the affirmative. Hence, the plaintiffs are entitled to the relief of the temporary injunction as prayed. Hence, in order to point No.5 I pass the following order :-

ORDER

- 1] Application is allowed.
- 2] The defendant No.1 to 3 are hereby restrained by granting the temporary injunction against them from disturbing the plaintiffs peaceful possession into the three rooms on the West side on the ground floor, the whole first floor and on the second floor five rooms into the suit property till the final decision into the suit.

Sd/-

Date :- 04/05/2016.

Place :- Kagal.

(Chetan Jagtap)

Joint C.J.J.D. Kagal.

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment / Order.

Name of the Stenographer	Sandip Maruti Patil (L.G.)
Name of Court	Jt. Civil Court & J.M.F.C. Kagal.
Date of Dictation	04/05/2016.
Judgment signed by the P.O. on	04/05/2016.
Judgment uploaded on	05/05/2016.