



**R.C.S.No. 157/2022**

**Akkatai Babaso Patil Vs. Raghunath Rama Patade**

**CNR - MHKO130013112022**

**ORDER PASSED BELOW EXH. 05**

**(Dt. 27/02/2024)**

**01.** This is the application of the plaintiff filed under Order 39, Rule 1 and 2 of the Code of Civil Procedure (In short C.P.C.) with request to restrain the defendant from causing obstruction and interference in the peaceful possession of the plaintiff over the suit property till final disposal of the suit.

**Brief facts of the plaintiff case is as under:-**

**02.** The following property will hereinafter be referred as the suit property:-

**(A)**

<b>Sr. No.</b>	<b>Village &amp; Property no.</b>	<b>Admeasuring Area Sq.feet.</b>	<b>Share.</b>
1.	Kasba Sangaon, Tal. Kagal in Gat no. 1019/B	OH. 60R	Full

**03.** As per the plaintiff, in respect of the suit property registered agreement to sell no. 380/97 dtd. 12/03/1997 was executed in between the plaintiff & defendants predecessors Raghunath. Consideration of the property was agreed for Rs. 80,000/-. At the time of, execution of agreement to sell, Rs. 65,000/- were given as a advance to the defendants predecessor and remaining amount of Rs. 15,000/- was agreed to be given at the time of execution of sell. In view of registered agreement to sell, mutation entry no. 5501 is sanctioned and name of the plaintiff is entered to the other rights column of 7/12 extract. At the time of execution of

registered agreement to sell defendant no. 2 has ratified to it.

**04.** It is the case of the plaintiff that, at the time of execution of agreement to sell, possession of the suit property was handed over to the plaintiff. The defendants are refusing to execute the sale-deed by obtaining prior permission from the Government. The suit property is obtained by the defendants father in rehabilitation scheme, therefore, before alienating the same, prior approval of the Government is necessary. However the defendants have failed to obtain prior approval. Resultantly, the plaintiff through her advocate on 15/02/2022 has issued notice to defendant no. 1/B. However, this defendant has refused to accept the same. The defendants are refusing to execute the sale-deed, which is causing obstruction & interference to the possession of the plaintiff in the suit property.

**05.** As per the plaintiff, the plaintiff is in possession of the suit property since last 25 years. Her livelihood is depend upon the income that she is getting from the suit property. Thus, in such a circumstances, as the defendants are causing obstruction & interference, the plaintiff has prayed to allow the application.

**Brief facts of the defendants case is as under:-**

**06.** The application is objected by the defendant through their say at Exh. no. 16. The defendants have denied execution of agreement to sell by their predecessor Raghunath in favour of the plaintiff. The defendants have submitted that, the suit property is obtained by them under rehabilitation scheme from the Government. These defendants are having their shares in the suit properties. The same is yet not partitioned. The plaintiff by taking mis-use of illiteracy of their predecessor, has got executed registered agreement to sell. However the same is not binding on the shares of these

defendants.

**07.** The defendants have submitted that, their predecessors Raghunath was never in need of money. Therefore, there was no need to alienate the suit property. Neither predecessor of the defendants nor this defendants have received any such amount as is quoted in the agreement. The defendant no. 1/B was never present in the Sub-Registrar Office for ratifying the agreement to sell. In fact, it is submitted that, in the life time of Raghunath, no notice was issued by this plaintiff for execution of sale-deed. The plaintiff has forcibly obtained possession of the suit property. The suit is not in limitation. Thus, with these submissions, the defendants have prayed to reject the application.

**08.** Heard Advocate Shri. A.J. Desai for the plaintiff & Advocate Shri. V.C. Powar for the defendants.

**09.** On the basis of rival pleadings of both the parties, following points are arises for my determination and my findings with respect to the same with reasoning is as under:-

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaintiff has made out <i>prima-facie</i> case?	In the Affirmative.
2.	Whether balance of convenience lies in favour of the plaintiff?	In the Affirmative.
3.	Whether irreparable loss will be caused to the plaintiff, if remedy of temporary injunction is refused?	In the Affirmative.
4.	What order?	As per final order.

## REASONS

### As to points No. 1 to 3:-

10. All the points are interlinked with each other. Thus, to avoid repetition of facts, they are discussed together.

11. It is not in dispute that the suit property was given to the defendants predecessor Raghunath under rehabilitation scheme by the State Government. The plaintiff is claiming her possession over the suit property by way of registered agreement to sell. However the defendants are denying execution of any such registered agreement to sell. In rival contention of both these parties, perusal of 7/12 extract of the suit property, it appears that, name of this plaintiff is entered into the other rights column of the suit property. In view of registered agreement to sell, mutation entry no. 5501 is sanctioned. Copy of mutation entry is on record which prima-facie denotes that, through this mutation entry, name of the plaintiff was entered to the other right column of the 7/12 extract of the suit property.

12. The defendants in their say have admitted possession of the plaintiff over the suit property. The defendants have contended that, the plaintiff has forcibly obtained possession of the suit property. There are certain documents submitted by these defendants, but those are in concerned with the earlier property of these defendants. Which have no bearings on the current suit property. The plaintiff in support of their case have failed on record affidavits of Ajit Aannappa Chaugule (Exh. No. 22), Abhay Magdum (Exh. no. 23) & Babaso Patil (Exh. no. 24). These witnesses have deposed about the possession of the plaintiff over the suit property. No such a counter affidavits are filed on record by the defendants.

13. Apart from these factual aspects, the defendants have

themselves admitted possession of the plaintiff over the suit property. This is the interim application wherein factum of possession is of the importance. The registered agreement to sell through which name of the plaintiff is entered to the other right column of 7/12 extract of the suit property is still in existence. Thus, as possession of the plaintiff is itself prima-facie established, the plaintiff is having prima-facie case. Balance of convenience lies in her favour and remedy of injunction if refused, the plaintiff may suffer loss. Thus, I answered points No. 1 to 3 in the affirmatives. In answer to point No. 4, following order is passed:-

**ORDER**

1. The application (Exh. 5) is allowed.
2. The defendants or any person on behalf of them is hereby temporarily restrained from causing obstruction & interference in the peaceful possession of the plaintiff over the suit property till final disposal of the suit.
3. In the peculiar facts & circumstances, there is no order as to costs.

Kagal.  
Date: 27/02/2024.

Sd/-  
**(A. B. Jawale)**  
Jt. Civil Judge Junior Division,  
Kagal.