

Order below Exhibit 5 in Regular Civil Suit No.141/2013

This is an application moved by the plaintiff under Order 39, Rule 1(c) of the Code of Civil Procedure.

2) Heard learned Advocates Shri. V. G. Desai for the plaintiff and learned advocate Shri. R. P. Bandiwadekar for the defendant No.1, 2 and 4.

3) Perused the application and say.

Description of the suit property :

4) The open space bearing Grampanchayat No.252, admeasuring North-south 100 feet in length and East-West 33 feet in width and assessed at Rs.330/- situated within the limits of the jurisdictional area of the Group Grampanchayat, Kanadi-Povachiswadi in the village Kanadi, Taluka-Chandgad, District-Kolhapur is the subject-matter of the suit. (Hereinafter for the sake of brevity referred to as "suit property"). The boundary marks of the suit property are descriptively described in para No.1 of the application.

Facts of the plaintiff's claim in brief are case :

5) Plaintiff contended that the suit property was belonging to Smt. Rukhamini w/o Vithoba Tarale alias Tarali. In the year 2011, Smt. Rukhamini felt the urgent need of the financial assistance to overcome from the domestic difficulties. Therefore, plaintiff put up the suit property for sale and made her offer to Smt. Sudha w/o Nagesh Kanade. On discussion and negotiation, Smt. Rukhamini agreed to sell the suit property to Smt. Sudha and by receiving the sum of Rs.40,000/- towards the consideration price, executed a registered sale deed on 10/05/2011 in favour of Smt. Sudha and delivered actual possession of the suit property. Thereafter, as per resolution No.9 passed by the Grampanchayat Kanadi-Povachiwadi on 12/02/2012 the name of Smt. Sudha came to be recorded over the Grampanchayat record of the suit property as owner and occupant.

6) Plaintiff further contended that thereafter Smt. Sudha was in need of financial assistance for her domestic difficulties. Therefore, Smt. Sudha put up the suit property for sale and made offer to the plaintiff. On discussion and negotiation, Smt. Sudha agreed to sell the suit property to the plaintiff and by

receiving the sum of Rs.2,00,000/- towards the consideration price, executed a registered sale deed on 18/09/2012 in favour of the plaintiff and delivered actual possession of the suit property to the plaintiff. Thereafter, as per resolution No.68 passed by the Grampanchayat Kanadi-Povachiwadi on 25/02/2013 the name of plaintiff came to be recorded over the Grampanchayat record of the suit property as owner and occupant. The plaintiff is paying the assessment and other relative taxes of the suit property to the Grampanchayat. The plaintiff is the bonafide purchaser of the suit property for value without notice.

7) Plaintiff further contended that plaintiff is having a shed in the suit property and she is using said shed to tether her cattle, to keep food-grains, agricultural implements, the fertilizers and the manures etc. The plaintiff is making the use of suit property to keep the haystacks of the dry grass in the summer season and to raise the vegetables in the rainy season. There is a standing tamarind tree in the suit property and plaintiff used to pick up the fruits of said tamarind tree. The defendants have no right, title or interest in the suit property. The defendants are not the law abiding persons. On 27/10/2013, at the instigation and with the positive help of the bad elements of the local area, the defendants made the criminal trespass and started to cut the tamarind tree and to remove the shed built up in the suit property. Hence, plaintiff is constrained to file the suit and present application.

8) The defendant No. 1, 2 and 4 appeared before the Court and contested the suit by filing their written statement and say at Exh.20. The defendants denied the averments made by the plaintiff. The description of the suit property is totally false and incorrect. Defendants contended that the suit property is never in possession of the plaintiff. Smt. Rukhasminibai Tarale is never in possession of the suit property and she has no right, title or interest in the suit property. Hence, she has no right to execute the alleged sale deed dated 10/05/2011 and said sale deed is false and without possession. Smt. Sudha Kanade is or was never in possession of the suit property on the basis of alleged sale deed dated 10/05/2011 and also plaintiff is not in possession of the suit

property on the basis of alleged sale deed dated 18/09/2012.

9) Defendants further contended that they are in possession of the suit property since ancestors. They have constructed a cattle shed in the suit property. There is no cause of action arose for the present suit. The defendants are in actual possession of the suit property and the balance of convenience lies in their favour. The plaintiff has no prima facie case. Hence, the application is liable to be rejected.

10) Considering the rival pleadings of both the parties, following points arose for my determination. I gave my findings thereon with reasons as under :

<u>Points.</u>	<u>Findings.</u>
1) Whether plaintiff has made out prima-facie case ?	Yes
2) Whether balance of convenience lies in favour of plaintiff ?	Yes.
3) Whether plaintiff would suffer irreparable loss if application is rejected ?.	Yes.
4) What order ?	As per final order.

REASONS

AS TO POINT NO. 1.

11) The learned advocate for the plaintiff submitted that the vendor Smt. Sudha by executing registered sale deed dated 18/09/2012 delivered the actual possession of the suit property to the plaintiff. Thereafter, as per the resolution No.68 passed by Grampanchayat Kanadi-Povachiwaidi on 25/02/2013 the name of plaintiff came to be recorded in the Grampanchayat record of the suit property as owner and occupant. To substantiate his contention, the learned advocate for the plaintiff has filed on record the copy of sale deed dated 18/09/2012 vide list Exh.3/2. The perusal of copy of said sale deed revealed that plaintiff has purchased the suit property from Smt. Sudha Kanade. The perusal of said sale deed further revealed that the possession of the suit property was delivered to the plaintiff on the date of sale deed. The perusal of assessment extract of the suit property vide Exh.3/5 revealed that plaintiff is the possessor and owner of the suit property. The

perusal of affidavits of Arjun Chougule, Krishna Gadade and Sambhaji Kanade vide Exh.29/5, 7 and 9 revealed that plaintiff is in possession of the suit property. Hence, I hold that prima facie plaintiff established her possession over the suit property.

12) On the contrary, the case of the defendant No.1, 2 and 4 is of total denial. The defendants contended that they are in possession of the suit property. But except the affidavit of witness Sanjay Kanade vide Exh.33/1 there is no documentary evidence filed by defendants to substantiate their contention. The perusal of assessment extract of the suit property filed by defendants vide Exh.31/1 revealed that original vendor Smt. Rukmini Vithoba Tarale is the owner and possessor of the suit property. On the contrary, the perusal of assessment extract of suit property of the year 2008-09 filed by plaintiff vide Exh.3/3 revealed that original vendor Smt. Rukmini was the owner of suit property admeasuring 3300 square feet open space and 330 square feet house. The perusal of assessment extract of suit property for the year 2012-13 vide Exh.3/4 revealed that vendor of plaintiff named Sou. Sudha Nagesh Kanade was the owner of said area. The plaintiff has filed the copy of sale deed executed by original vendor Smt. Rukmini in favour of vendor of the plaintiff named Smt. Sudha. The perusal of copy of said sale deed dated revealed that Smt. Rukmini has sold out 3300 square feet area out of Grampanchayat Milkat No.252 to Smt. Sudha Nagesh Kanade. Smt. Sudha Tarale had executed the sale deed dated 18/09/2012 and sold her house admeasuring 330 square feet and open land admeasuring 3300 square feet to the plaintiff by mentioning the boundary marks of said area.

13) The learned advocate for the defendants submitted that the boundary mark shown in the sale deed dated 10/05/2011 executed by Smt. Rukmini in favour of Smt. Sudha towards eastern side is totally different from the boundary shown in title clause. The perusal of copy of sale deed dated 10/05/2011 by Smt. Rukmini in favour of Smt. Sudha revealed that towards eastern side of the suit property there is house of Rukmini. However, the perusal of copy of sale deed dated 18/09/2012 executed by Smt. Sudha in favour of the plaintiff revealed that

towards eastern side the house of defendant No.4 is situated. Therefore, it appears that the boundary mark shown towards eastern side in the sale deed dated 10/05/2011 and the sale deed dated 18/02/2012 executed by Smt. Sudha in favour of the plaintiff are different. But Smt. Sudha by executing sale deed dated 18/09/2012 has sold out house along with suit property sold by original vendor Smt. Rukmini to her. Therefore, it appears that there is variance of eastern boundary of the suit property shown in the sale deeds dated 10/05/2011 and 18/09/2012.

14) Admittedly, the sale deed dated 18/09/2012 executed in favour of the plaintiff by Smt. Sudha Kanade is in existence and till date it is not cancelled. Therefore, I hold that prima facie plaintiff has established her ownership and possession over the suit property. Hence, I hold that case of the plaintiff is arguable one and needs to be tried. Hence, I answer point No.1 in the affirmative.

AS TO POINTS NO. 2 AND 3 :

15) As I held in point No.1 that prima facie plaintiff has established her ownership and possession over the suit property since the date of purchase till date. Hence, prima facie it appears that plaintiff is in possession of the suit property has a right to enjoy the suit property as per her wish and whims. On the contrary, the defendants are not at all concerned with the suit property. The plaintiff contended that the defendants made the criminal trespass and started to cut the tamarind tree and to remove the shed from the suit property and thereby caused obstruction and interference to her peaceful possession over the suit property. Hence, I hold that plaintiff's right to the enjoyment of the suit property is apprehended. If the defendants are not restrained from cutting the tamarind tree and removing shed from the suit property, then greater inconvenience and irreparable loss will be caused to the plaintiff rather than the defendants. Hence, I hold that balance of convenience lies in favour of the plaintiff. Hence, I answer points No. 2 and 3 in the affirmative.

AS TO POINT NO. 4.

16) In view of my findings as to points Nos. 1 to 3, I hold that application

deserves to allowed. Hence, in answer to point No. 4, I proceed to pass the following order.

ORDER

1. The application Exh. 5 is allowed.
2. The defendants or anybody claiming on their behalf, are restrained from cutting the standing tamarind tree and from removing the shed in the suit property and thereby causing obstruction and interference in the peaceful and exclusive possession of the plaintiff till final disposal of the suit.
3. The costs in the main cause.

Date:- 21/07/2016.

Sd/-
(M. D. Thombare)
Civil Judge, Junior Division,
Chandgad.

C E R T I F I C A T E

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	Shri. V. L. Tadkod, L. G. Stenographer.
Name of Court	Shri. M. D. Thombare, Civil Judge, Junior Division and Judicial Magistrate, First Class, Chandgad.
Date of Dictation	21/07/16
Judgment signed by the P. O. on	22/07/16
Judgment uploaded on	22/07/16