

ORDER BELOW EXH.05
IN REG.CIVIL.SUIT NO.34/2014

This is an application under Order 39 Rule 1 and 2 of Code of Civil Procedure.

02. Plaintiff averred that he purchased 25 R of land in block no.298, total admeasuring 50 R at village Uchat, Tal.Shahuwadi, Dist.Kolhapur having boundaries -

East - Land of 1/4th share of defendant no.2 in block no.298.

West - Land of Chandrakant Bandushet Warang.

South - River

North - Land of Chandrakant Bandushet Warang.

(Hereinafter referred as "suit property" for the sake of brevity).

03. Plaintiff purchased suit property from Ganpati Tukaram Kokate and Maruti Tukaram Kokate by registered sale deed no.785/2013, dated 21/05/2013. The mutation entries are accordingly taken. Plaintiff is in possession of the suit property.

04. The block no.298 belonged to Ganpati Tukaram Kokate and Maruti Tukaram Kokate, Shankar Tukaram Kokate (defendant no.2) and Pravin Gopal Patil. Pravin Gopal Patil purchased 1/4th share in block no.298 from Tukaram Rama Kokate. In the year 1999 there was oral partition amongst the co-sharers of block no.298 and the suit property came to the share of Ganpati Tukaram Kokatae and Maruti Tukaram Kokate. Plaintiff along with his father Pravin Berde after purchasing the suit property cultivated the rice over 15 R of land and in remaining 10 R of land there was standing sugarcane crop.

05. On 02/02/2014 plaintiff was cultivating his sugarcane crop and defendant no.1 obstructed the plaintiff. Hence, plaintiff was constrained to file this application.

06. Defendant had filed reply at Exh.17. They have contended that defendant no.2 prior to this suit had filed suit against the plaintiff for declaration and perpetual injunction which is pending in this Court and plaintiff has not made any reference of the same in his suit.

07. On 27/02/1984 the suit property was given by District Collector, Kolhapur to Tukaram Rama Kokate being alluvial land for cultivation on certain terms and conditions. Plaintiff couldn't have purchased the suit property without the permission of District Collector. As per the order of District Collector, Tahasildar Shahuwadi by order dated 10/03/1986 allotted the suit property to Tukaram Rama Kokate on 22/03/1990. Talathi mutated the same by taking mutation entry no.442. On demise of Tukaram Rama Kokate defendants are in possession of the suit property.

08. Ganpati Tukaram Kokate and Maruti Tukaram Kokate had already executed an agreement to sale in respect of the suit property in favour of defendant no.1. The said agreement was in existence and plaintiff without consulting the defendant no.1 had entered into a sale deed dated 21/05/2013. He therefore prayed that the application be rejected.

09. Defendant no.1 had filed additional written statement at Exh.48. She averred that Ganpati Kokate on 21/02/2005 and Maruti Ganpati Kokate on 09/08/2008 executed mortgage cum agreement to sale of the suit property in favour of defendant no.1. Ganpati Kokate and Maruti Kokate both accepted Rs.30,000/- each and had mortgaged suit property with defendant no.1. Since then defendant nos.1 and 2 are in possession of the suit property. Prior to expiration of period of 10 years plaintiff purchased the suit property from Ganpati Kokate and Maruti Kokate. It was agreed in the mortgage deed that if the mortgage money is not returned Ganpati and Maruti would transfer the suit property in favour of defendant no.1. Ganpati Kokate and Maruti Kokate have not returned the mortgage money. Hence they have prayed that the application be rejected.

10. Considering the application, reply and the argument advanced by both the learned advocates following points arise for my determination I have recorded my findings against them for the reasons given there under-

<u>SR.</u> <u>NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether plaintiff has made out prima facie case ?	In the Negative
2.	Whether balance of convenience lies in favour of plaintiff ?	In the Negative
3.	Whether plaintiff will suffer irreparable loss if injunction is not granted ?	In the Negative
4.	What order ?	Application is rejected.

REASONS

As to point Nos.1 to 4 :

11. Learned advocate for plaintiff argued that sale deed of the plaintiff is registered. Accordingly, mutation entry is taken. Defendants have only placed on record one mortgage deed dated 21/02/2005. They have not placed on record another mortgage deed dated 09/08/2008. The mortgage deed's are unregistered. It is mentioned in the mortgage deed that possession is to be taken at same future dates by the defendants. Defendants were not put in possession of the suit property as per the mortgage deed dated 21/02/2005. Since the year 2005 Ganpati Kokate and Maruti Kokate were themselves in possession of the suit property. Name of defendant no.1 is never recorded in the cultivation column. He therefore argued that plaintiffs have prima facie proved their case and temporary injunction be granted.

12. Learned advocate for defendants argued that Maruti Kokate and Ganpati Kokate are permanent resident of village Mumbai. Defendant no.2 Shankar Kokate is their brother and defendant no.1 Balabai Kokate is their sister-in-law. Balabai Kokate with the help of Vasant Sakharam Patil was cultivating her share in the suit property and also the share of Maruti Kokate and Ganpati Kokate. Maruti Kokate and Ganpati Kokate have accepted Rs.30,000/- each the mortgage money and mortgaged the suit property in favour of defendant no.1. Since then defendants are in possession of the suit property. Defendants had cultivated rice and sugarcane crop in the suit property and while harvesting the rice and sugarcane crop plaintiff obstructed the defendants which resulted into filing of F.I.R.'s. Learned advocate for defendant argued that defendant is in possession of the suit property and hence the application be rejected.

13. It is pertinent to note that plaintiff has given the boundaries of the suit property in his plaint and application. Plaintiff in the **South** direction has shown river. Defendant in his reply at Exh.17 has not disputed the boundaries mentioned by the plaintiff but in written statement at Exh.48 defendant no.1 disputed the boundaries of the suit property and contended that towards South of the suit property is alluvial land possessed by Nilesh Berde. It is pertinent to note that in the sale deed dated 21/05/2013 of the plaintiff to the South is shown a river. Defendant alongwith list Exh.28/4 has placed on record the order of Collector dated 27 February, 1984 which shows that the adjacent legal holder of gat no.298 Shri.Tukaram Kokate is granted alluvial land admeasuring 54 R. The mutation entry no.442 placed on record at Exh.28/5 shows that in front of block no.289 the alluvial land admeasuring 54 R is given in possession of Tukaram Rama Kokate. Plaintiff in his suit has not mentioned the alluvial land in any direction.

14. There is another order of Additional Collector, Kolhapur dated 09/03/2016 which shows therein the boundaries of alluvial land as follows-

East - Land of block no.285 of Jeevan Shriram Berde.

West- Alluvion land and thereafter Shali river.

North - 41 R of land of block no.298.

South - Shali river and thereafter boundaries of Kolgaon village.

Even if these boundaries are considered it is apparent that there is alluvial land abutting to block no.298. Plaintiff in his sale deed and in the suit has not shown the alluvium land. In other words' plaintiff has tried to grab the alluvial land.

15. Plaintiff has prima- facie failed to establish his ownership and possession over the suit property. The description of the suit property is not proper and the same is established in view of order of Collector. Plaintiff has not approached the Court with clean hands. If temporary injunction is not granted plaintiff would not suffer irreparable loss. Balance of convenience is not in favour of plaintiff. Hence, I answer all the points in negative and in answer the point No.4 pass following order.

ORDER

01. Application is rejected.

02. Costs in cause.

Date :- 06/04/2018

Sd/-
(A.A.Walujkar)
Civil Judge Junior Division
Malkapur-Shahuwadi.

CERTIFICATE

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

Name of the Stenographer : S.A.SHINDE

Name of the Court : A.A.Walujkar, C.J.J.D & J.M.F.C.
Malkapur-Shahuwadi,

Date of judgment : 06/04/2018

Judgment signed by the presiding
officer on : 06/04/2018

Judgment uploaded on : 17/04/2018