

MHKO170001082022 	Regular Civil Suit No. 18/2022. Shalmon David Kale Vs. Sunil Shamrao Gaikwad
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ORDER BELOW EXH. 5.

1. The present application is filed by the plaintiff for grant of interim injunction under provisions of Order 39 Rule 1 & 2 Of Code of Civil Procedure (herein after referred as CPC).

2. Plaintiff filed this suit for declaration and perpetual injunction. It is submitted by the plaintiff that the suit property is ancestral property of plaintiff. That the deceased father of plaintiff sold the suit property to the defendant by way of registered sale deed dated 28.06.2006. That the deceased father of plaintiff Devid Laxman kale has not obtained consent of plaintiff to the said sale deed. The suit property is not self acquired property of deceased father of plaintiff Devid Laxman kale. Therefore, the said sale deed is not binding on the plaintiff. Thus plaintiff filed this suit to declare that the sale deed dated 28.06.2006 is vide and ab-initio. The plaintiff also prayed for recovery of possession and perpetual injunction against defendant. The Plaintiff is under apprehension that defendant will obstruct his possession pending suit therefore, prayed for interim injunction to restrain defendant from obstructing his possession over the suit property.

3. Defendant filed written statement cum say to this application at Exh. 11 and opposed the application. Defendant at the out set denied all the submission of plaintiff. It is submitted by defendant that the sale deed

dated 26.06.2006 is registered, legal and valid. Defendant is owner and possessor of suit property since execution of his sale deed dated 26.06.2006. The plaintiff has no any concern with the suit property. The defendant is in possession of the suit property from last 16 years. There is no cause to filed this suit, therefore defendant prayed to reject the application.

4. Perused the application, say and material on record. Following points are arose for my determination and I have recorded my findings against each of them as follows-

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether there is a prima facie case in favour plaintiff ?	No.
2	Whether balance of convenience is in favour of plaintiff ?	No.
3	Whether irreparable loss would be caused to the plaintiff if application for temporary injunction is rejected?	No.

REASONS

AS TO POINT NO. 1 :-

The plaintiffs have mainly relied on following documents at Exh.3.

- a) Copy of sale deed dated 28.06.2006
- b) Copy of Extract of Diary No.2538 of Gat No.676.
- c) Copy of Extract of Diary No.6764 of Gat No.676.
- d) Copy of 7x12 extract of Gat No. 676.
- e) Copy of 7x12 extract of Gat No. 676.
- f) Copy Copy of 7x12 of Surve No. 160.

- g) Copy Copy of 7x12 of Surve No. 180.
- h) Online copy of recent 7x12 extract of Gat No.676.

The plaintiffs have mainly relied on following documents at Exh.13.

- a. Copy of consolidation table of Gat No. 180/20 A,B,C,D and E.
- b. Copy of Consolidation chart of Suit Property Surve No. 180/19 A,B, and Surve No. 180/23 A,B,E.
- c. Copy of Consolidation chart of Property Surve No.180/19-B, 180/23,B,D.
- d. Copy of 7x12 extract of Gat No.676.
- e. Copy of 7x12 extract of Gat No.686/1.
- f. Copy of 7x12 extract of Gat No.686/2.

5. Further both the parties to substantiate their claim have relied on copy of sale deed dated 28.06.2006, revenue record, and affidavits of individual in support o their respective claims.

6. Heard advocate Majgaonkar for plaintiff and advocate Desai for defendant. Advocate for plaintiff argued that the suit property is ancestral property of plaintiff; which is undivided and commonly owned by the plaintiff. Therefore, father of plaintiff has no right to sold the suit property without consent of plaintiff. Plaintiff is adult citizen at the time of execution of said sale deed. Therefore the said sale deed is void ab-initio. Plaintiff is owner and possessor of the suit property. Defendant has obstructed his possession. Thus plaintiff has prima facie case and balance of convenience in his favour. Advocate for defendant vehemently argued that the disputed sale deed is valid and legal. Plaintiff prayed for recovery of possession. Which shows that plaintiff is not in possession of the suit property. Defendant is bonafide purchaser since 2006 and he is in settled

possession of the suit property since then. Therefore, he cannot be ousted without following due process of law. Thus plaintiff has no prima face case and balance of convenience , hence prayed for rejection of application.

7. Perused the application, say and record of case. Plaintiff's suit is for declaration and injunction. Plaintiff prayed to declare that the disputed sale deed dated 28.06.2006 is void-ab-initio and for grant of perpetual injunction. Perused the prayer clause carefully in prayer clause 18/C it is specifically prayed by the plaintiff that " *the possession of suit property should be recovered from defendant* " The plaintiff claiming recovery of possession which means plaintiff admitted that he is not in possession of suit property. Further it is not specifically denial by the plaintiff that defendant has not in possession of the suit property. Further the contents of disputed sale deed is also not denied by the plaintiff. Plaintiff mainly disputing execution of sale deed. From the contents of said sale deed, it is seen that the possession of the suit property is handed over to the defendant by the deceased father of plaintiff on the date of execution of sale deed itself. Therefore, long standing possession of defendant is seen since from year 2006. From above facts it is prima facie clear that the plaintiff is not in possession of the suit property. It is prima facie seen that defendant is in possession of the suit property since 2006. Whether the suit property is ancestral is not clearly established at this primary stage. Therefore, plaintiff can not be treated as co-sharers in suit property at the primary stage. As the plaintiff prima face failed to prove his possession over the suit property no question of obstruction at the hands of defendant will arise. In such circumstances it cannot be said that plaintiff has plausible case required to be tried. Considering these facts and circumstances plaintiff has failed to prove prima face case in his

favour. Hence point No.1 is answered in negative.

AS TO POINT NO. 2 and 3.

8. As the plaintiff failed to prove prima face case and obstruction at the hands of defendant; grant of temporary injunction in plaintiff's favour will cause great hardship and irreparable loss to the defendant. The defendant prima facie prove that he is in possession of the suit property since last 16 years thus in such circumstances if interim injunction granted it will cause irreparable loss to the defendant and would lead to multiplicity of proceeding. Considering these facts and circumstances point No. 2 and 3 are answered in negative. In result, following order is passed.

ORDER

a) Application is rejected.

b) Costs in cause.

(Dictated and pronounced in open Court).

Date: 08.09.2022.

Atul A. Kore.
Jt. Civil Judge J.D. Panhala.

