

**ORDER BELOW EXH - 05**

(Passed On 14th day of June, 2019)

This is an application by plaintiffs under **Order XXXIX Rule 1 of The Code of Civil Procedure, 1908** (hereinafter referred as "**C.P.C.**") for the granting of temporary injunction.

Suit Property

2. Subject matter of this suit is 07 R. land in Gat No.749 having old S.No.150/1 situated as village Kushire, Taluka Panhala, District Kolhapur. This property is herein after referred to as "**Suit Property**".

Case Of Plaintiffs In Concise

3. Yesba, the grandfather of plaintiffs, was having three sons namely Kondiba, Shripati and Rama. Plaintiffs are heirs of Rama whereas defendants No. 1 to 6 are surviving heirs of Kondiba and Shripati. Yesba was having 46 R. land in different survey numbers. Out of said 46 R. land, 07 R. land in S.No.150/1 and 08 R. land in S.No.150/4/3 which was total 15 R. land came to the share of Rama. Total 16 R. land in S.No.150/4/2 and 150/4/4 came to the share of Shripati whereas total 16 R. land in S.No.150/4/1-A and 150/4/2 came to the share of Kondiba. In spite of the shares, land S.No.150/1 having area 7 R. remained in the name of Kondiba in the record of rights. Said land was being cultivated by Rama and after him, his heirs, but there was hollow entry of the name of Kondiba in the record on rights of said land. After the consolidation scheme, land S.No.150/1, became land Gat No.749. After the death of Kondiba, names of defendants No.1 & 2 were mutated in the record of rights of suit property. On 10.04.1989, defendant No.2 executed sale-deed of 3.5 R. land

in favour of defendants No.7 & 8 whereas the remaining 3.5 R. land remained in name of defendant No.1. This sale-deed was hollow as possession continued with Rama and after him, his heirs. On 22.01.2019, defendants No.1, 7 & 8 came to suit property and obstructed the possession of plaintiffs. They tried to dispossess plaintiffs to which they retaliated. After this incident, plaintiffs came to know about the sale-deed in favour of defendants No.7 & 8. Plaintiffs are in settled possession of suit property since long and their settled possession is to be protected by order of temporary injunction till decision of suit, by restraining defendants from interfering and obstructing the possession of plaintiffs over the suit property. In the main suit, relief of declaration that sale-deed executed by defendant No.2 in favour of defendant No.7 & 8 dated 10.04.1989 is void and not binding on plaintiffs.

Case Of Defendants In Concise

4. Defendant No.2 has filed written statement and say at **Exh.21** whereas defendants No.1, 7 & 8 have filed their say and written statement at **Exh.22**. As the contents of their written statement are identical, their stories are taken at ones. As per these defendants, land S.No.150/1 which is now Gat No.749 was given to the share of Kondiba and these entries continued uninterruptedly. After the death of Kondiba and his son Anna, names of defendants No.1 and 2 were entered in the record of rights as owners of 3.5 R. land each. Plaintiffs are trying to take benefit of old incorrect entry in revenue record whereby their father Rama show as tenant in land S.No.150/1. However, this entry was deleted in year 1956-57 and since then, the name of Kondiba continued in the ownership and possession column. As the names of defendants No.1 and 2 appeared in 7/12 extract and as they were having title over suit property, on 10.04.1989 defendant No.2 sold his 3.5 R. land by registered sale deed No.90/1989 to

defendant No.7 & 8. This sale-deed is more than 30 years old. Since then, defendants No.1, 7 & 8 are continuing their possession over their respective lands. Plaintiffs are having no concern with suit property and therefore it is prayed that the suit be dismissed & application for temporary injunction be rejected.

Material For Consideration

5. I have gone through the counter-pleadings, the documents placed on record and the supporting affidavits filed by both parties. I have also heard learned advocates for both sides at length.

Points For Determination & Findings

6. Considering the matter before this Court, following points arise for my determination. Findings on them are recorded for reasons to follow ;

Points For Determination	Findings
1. Whether there is prima facie case in favour of plaintiffs ?	... No.
2. Whether balance of convenience tilt in favour of plaintiffs ?	... No.
3. Whether irreparable loss will be caused to plaintiffs, if temporary injunction is not granted ?	... No.
4. What order ?	Application is rejected.

REASONS

As To Points No.01 to 03

7. For the sake of convenience, reasons pertaining to all these points are taken together for discussion. Most important aspect of consideration here is the prima facie possession over the suit property. If plaintiffs succeed in establishing their prima facie possession over the suit property, then the

prima facie case will be in their favour and if defendants No.1, 7 & 8 succeed in showing their possession then the prima facie case will be in their favour. Firstly, it must be seen that while deciding an application for temporary injunction the Court is supposed to consider the affidavits or other materials placed on record. In the case at hand, plaintiffs have filed affidavits of Indrajeet Patil, Hindurao Todkar, Dhanji Chopdar and Prakash Mane whereas defendants have filed the affidavits of Mahadev Todkar, Ganpati Mane and Jaysing Kalke. Those who have filed affidavits in favour of plaintiffs have stated that plaintiffs are in possession of suit property whereas those who have been filed affidavits in favour of defendants have stated that defendant No.1, 7 and 8 are in possession of said property. Therefore, here is a situation where *oath is standing against oath*. Under such situation, it will not be proper to accept one oath at the cost of discarding the other oaths. Therefore, it will not be just and proper to decide the aspect of possession over the suit property only on the basis of affidavits or the quantum of affidavits filed by counter-parties. Court is now required to see the other documentary evidence placed on record to ascertain the aspect of prima facie possession over the suit property.

8. Execution of sale-deed dated 10.04.1989 by defendant No.2 in favour of defendants No.7 & 8 is an admitted fact, though the plaintiffs have disputed this sale-deed by contending that, it is a hollow instrument of sale. As per defendants, it was an absolute transaction of sale and since the date of sale-deed defendants No.7 & 8 are in possession of suit property. At this prima facie stage of interlocutory adjudication, it will be premature to say as to whether this sale-deed was hollow or an absolute transaction. However, as it is registered sale-deed it carries presumption of correctness and authentication. So also, as this sale-deed is a more than 30 years old document, it further carries the presumption of due execution and

due attestation. Therefore, due execution of this registered sale-deed of suit property by defendant No.2 in favour of defendant No. 7 & 8 as a material prima facie circumstances which is in favour of defendants. This sale-deed has not been challenged since last 30 years. This sale-deed stand tall and is unchallenged for such a considerable period of 30 years and this fact further prima facie goes in favour of defendants.

9. After going through the entries in 7/12 extracts of suit property it appears that, name of Kondiba is appearing in 7/12 extract of S.No.150/1 since more than 50 years. After the death of Kondiba and his son Anna, names of defendants No.1 & 2 appears to have been entered in the 7/12 extract. These entries are continuing till the execution of sale-deed by defendant No.2 in favour of defendants No.7 & 8. After the sale-deed, the names of defendants No.7 & 8 appears to have been entered in the record of rights in place of the name of defendant No.02 and the same appears to be continuing till today. These continuous, uninterrupted, unchallenged and undisputed revenue entries for more than 50 years certainly carries the presumption of correctness. No doubt, revenue entries are only made for fiscal purposes and no right, title or interest can be created or extinguished by the revenue entries. However, when the revenue entries are consistent for such a long period then they must be prima facie accepted to be true and correct and carries considerable prima facie value. Therefore, these revenue entries are in favour of defendants and seriously against the case of plaintiffs.

10. The consolidation chart shows that, land S.No.150/1 was given new Gat No.749 which is the suit property. There are initial few entries in the very old 7/12 extracts of suit property which shows the name of Rama in the possession column of land S.No.150/1. In the other rights claim of

these 7/12 extracts, name of Rama was shown as tenant. However, copy of a mutation entry is filed on record which shows that, entry of tenancy of the name of Rama is deleted. Therefore, even the possession of Rama as tenant over suit property is discarded with the deletion of entry of tenancy. Entries of the possession of Rama are very much old. Since more than 30 years there is no whisper of the name of Rama or after him his heirs in any record of right of suit property. Therefore, there is absolutely no document on record to show that, Rama was and after him his heirs are in possession of suit property.

11. Learned advocate for plaintiffs argued that, as the name of Rama appeared in possession column of old 7/12 extract, discontinuance of this possession or the aspect of dispossession of Rama nowhere appears on record and therefore the continuity of possession of Rama over the suit property can be presumed and also, the fact that, after the death of Rama the continuity of possession of his heirs over suit property be presumed. However, I seriously disagrees with this argument and the case of plaintiff because, there are sufficient documents on record to show that defendants No.1, 7 & 8 are in possession of suit property. Registered sale-deed which is more than 30 years old is more believable than those ancient entries of the name of Rama in possession claim of 7/12 extract. Therefore, there is absolutely no material on record to show that, plaintiffs are in possession of suit property.

12. Plaintiff have placed on record the certificate from Jotirling Pani Purwatha Seva Sanstha Maryadit, Kushire, Taluka Panhala District Kolhaur wherein it is mentioned that, on 6.5 R. land the irrigation facility is provided to plaintiffs. However, which is this 6.5 R. land has not been specified in this certificate. The Gat number or the survey number of said 6.5 R land is not mentioned and therefore, it cannot be said that, this 6.5 R.

land is actually the suit property. Therefore, plaintiffs have filed to prove on prima facie basis that they are in possession of suit property and when the possession is itself not shown, it can not be said that, plaintiffs have any prima facie case in their favour.

13. When possession over the suit property is itself not of plaintiffs, no inconvenience will be caused to plaintiffs if the temporary injunction is not granted in their favour. Therefore the balance of convenience tilt in favour of defendants and not in favour of plaintiffs. There is no question of causing of any irreparable loss to plaintiff, if their possession itself is not established. Therefore, no irreparable loss will be caused to plaintiffs even if temporary injunction is not granted in their favour.

14. From the entire discussion supra, neither there is prima facie case in favour of plaintiffs, nor the balance of convenience tilts in favour of plaintiffs and no irreparable loss will be caused to plaintiffs, even if the temporary injunction is not granted. Resultantly, I answer points No.1 to 3 in the negative.

As To Point No.04

15. As the above three points are answered in the negative, there is no question of granting the relief of temporary injunction even by taking the aid pf section 94 or section 151 of CPC. Cost of this application shall be cost in cause. Finally, I answer point No.04 as application is rejected and pass the following order ;

ORDER

- a. Application for temporary injunction stands rejected.
- b. Issues are framed today and both parties to expedite the trial.

Panhala.
Dt.14.06.2019

Sd/-
(**Ritesh R. Mawatwal**)
Judicial Magistrate First Class
Court No.02, Panhala.

CERTIFICATE

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

Name of the Stenographer	:A.S.Patil
Court	: J.M.F.C. Court No. 2, Panhala.
Date	: 14.06.2019
Order signed by the presiding officer on	: 14.06.2019
Order uploaded on	: 14.06.2019