

CNR : MHKO19-000108-2018

Reg. Civil Suit No. 22 /2018
CNR : MHKO19-000108-2018**ORDER BELOW EXH. 5**

This is an application by plaintiffs under order 39 Rule 1 and 2 of C.P.C. praying for interim relief restraining defendants from disturbing plaintiffs' possession in the suit property till the hearing of suit.

2. The property at Gat No. 283 of Village Durgamanwad, Tal. Radhanagari, Dist. Kolhapur totally admeasuring area 01 H. 10.3 Are is described by plaintiffs as suit property. As per plaintiffs the suit property was originally owned by one Mr. Ananda Keshav Garde and he had inducted plaintiffs' grand father namely Bhujanga Daji Patil ("Bhujanga") and Hanama Daji Patil ("Hanama") as tenants in the same. Bhujanga and Hanama were real brothers. Plaintiff 1 and defendant 7 are grand sons and plaintiff 2 is son of Bhujanga. Defendants 1, 2, 3, 5 and 6 are grand sons and defendant 4 is son of Hanama.

3. Bhujanga and Hanama were protected tenants in the suit property and had become owners thereof on tillers day. However, still the proceeding U/s 32-G of Bombay Tenancy Act (the "Act"), is not conducted. Though after the compliance of provisions of Bombay Tenancy Act, plaintiffs and defendant 7 are entitled to become owners of ½ portion of suit property.

4. However, with the help of false and fabricated certificate U/s 32-M of Bombay Tenancy Act (the "Certificate") defendants have

got their names recorded to the revenue record of suit property vide mutation entry No. 255. The certificate is dated 27/06/1987 and is in the name of Hanama. However, Hanama has expired on 08/11/1967. Thus, apparently the certificate is in the name of dead person. On this count also the certificate is invalid. However, taking undue advantage of their names recorded to the 7/12 extract of suit property defendants have started to disturb plaintiff's possession. Hence, present application.

5. Vide their say and written statement at Exh. 19 defendants 1 to 6 have strongly combated the application contending its content as false and frivolous. Defendants admit the relationship averred by plaintiff. However, they contend that till year 1990 the names of Hanama and Bhujanga were appearing as tenant on 7/12 extract of suit property. However, vide proceeding conducted under the provisions of the Act, late Hanama has been declared as protected tenant of the suit property. Subsequent thereto defendants' predecessors have paid the amount of consideration. Pursuant thereto the certificate is issued in the name of defendants predecessor late Hanama. Following the said certificate, mutation entry No. 255 was passed and defendants' names are recorded in ownership as well as crop cultivation columns of 7/12 extract of suit property. Defendants are holding possession over the entire suit property. Hence, plaintiffs have no right or authority to seek any relief in the court. Ultimately, they have prayed for rejection of the application.

6. Despite service of suit summons defendant 7 has choose to remain absent.

7. In support of their case plaintiffs have placed reliance upon following documents :-

Sr.No.	Particular
1	Certified copy of 7/12 extract of Gat. No. 283 for the year 1961-62 to 1977-1978 at Exh. 3 Sr. No. 1
2	Certified copy of mutation extract dated 09/08/1952 at Exh. 3 Sr. No. 2
3	Certified copy of mutation extract dated 13/03/2015 at Exh. 3 Sr. No. 3
4	Certified copy of 7/12 extract of Gat. No. 283 for the year 1979-80 to 1989-1990 at Exh. 3 Sr. No. 4
5	Certified copy of 7/12 extract of Gat. No. 283 for the year 1990-91 to 1999-2000 at Exh. 3 Sr. No. 5
6	Certified copy of 7/12 extract of Gat. No. 283 for the year 2001-02 to 2012-2013 at Exh. 3 Sr. No. 6
7	Certified copy of mutation entry at Exh. 3 Sr. No. 7
8	Certified copy of mutation entry No. 255 at Exh. 3 Sr. No. 8
9	Copy of Certificate at Exh. 3 Sr. No. 9
10	The letter dated 31/08/2015 issued by Tahasildar, Radhangari at Exh. 3 Sr. No. 10
11	Copy of death certificate of Kundalik Hanama patil at Exh. 3 Sr. No. 12
12	Certified copy of consolidation scheme extract of survey No. 68 at Exh. 3 Sr. No. 14
13	Death certificate of Hanama Daji Patil at Exh. 16 Sr. No. 1
14	Death certificate of Bhujanga Daji Patil at Exh. 16 Sr. No. 2
15	Death certificate of Pandurang Bhujanga Patil at Exh. 16 Sr. No. 3
16	Certified copy of 7/12 extract of Gat. No. 283 for the year 1979-80 to 1989-1990 at Exh. 16 Sr. No. 4
17	Certified copy of 7/12 extract of Gat. No. 283 for the year 1990-91 to 1999-2000 at Exh. 16 Sr. No. 5
18	Certified copy of 7/12 extract of Gat. No. 283 for the year 1961-62 to 1970-1971 at Exh. 16 Sr. No. 6

19	Certified copy of mutation entry No. 255 at Exh. 16 Sr. No. 7
20	Certified copy of 7/12 extract of Gat. No. 283 for the year 2001 to 2017 at Exh. 16 Sr. No. 8
21	Certified copy of assessment extract pertaining to tenancy rights at Exh. 16 Sr No. 9
22	Certified copy of account extract of suit property at Exh. 16 Sr. No. 10

Plaintiffs have also placed reliance on the Affidavits of Mr. Pandurang Shankar Gurav (Exh.32/1), Mr. Santosh Babu Gurav (Exh.32/2), Satappa Maruti Hajam (Exh.32/3), Mr. Vitthal Hari Gurav (Exh.32/4) .

8. In support of their case defendants 1 to 6 have placed reliance on following documents:-

Sr.No.	Particular
1	Certified copy of 7/12 extract of Gat. No. 283 for the year 2008-2009 at Exh. 18 Sr. No. 1
2	Certified copy of 7/12 extract of Gat. No. 283 for the year 2013-2014 at Exh. 18 Sr. No. 2
3	Certified copy of 7/12 extract of Gat. No. 283 for the year 2014-2015 at Exh. 18 Sr. No. 3
4	Certified copy of 7/12 extract of Gat. No. 283 for the year 2015-2016 at Exh. 18 Sr. No. 4
5	Certified copy of 7/12 extract of Gat. No. 283 for the year 2016-2017 at Exh. 18 Sr. No. 5
6	Copy of R.C.S. No. 105/2013 at Exh. 18 Sr. No. 6
7	Copy judgment in R.T.S. Appeal No. 842/2016 at Exh. 18 Sr. No. 7
8	Original Challan No. 31 issued by Sub Treasury officer, Radhangari at Exh. 29 Sr. No. 1
9	Original Challan No. 17 issued by Sub Treasury officer, Radhangari at Exh. 29 Sr. No. 2
10	Original Challan No. 90 issued by Sub Treasury officer, Radhangari at Exh. 29 Sr. No. 3

11	Original Challan No. 7 issued by Sub Treasury officer, Radhangari at Exh. 29 Sr. No. 4
12	Original Challan No. 166 issued by Sub Treasury officer, Radhangari at Exh. 29 Sr. No. 5
13	Original Challan No. 78 issued by Sub Treasury officer, Radhangari at Exh. 29 Sr. No. 6
14	Original Challan No. 11 issued by Sub Treasury officer, Radhangari at Exh. 29 Sr. No. 7
15	Original Challan No. 276 issued by Sub Treasury officer, Radhangari at Exh. 29 Sr. No. 8
16	Original Challan No. 47 issued by Sub Treasury officer, Radhangari at Exh. 29 Sr. No. 9
17	Original notice in the name of Hanama Daji Patil at Exh. 29 Sr. No. 10
18	Original 32 M Certificate at Exh. 29 Sr. No. 11.

Defendants have also placed reliance on the affidavits of Mr. Ananda Dnyanu Gurav (Exh.25), Mr. Mahipati Narayan Gurav (Exh.26), Mr. Balu Tatoba Gurav (Exh.27), Mr. Balwant Dhondi Patil (Exh.30).

9. Heard both sides. Perused record. The points crop-up for determination and reasoned findings thereon are recorded as under :-

Sr.No.	Point for determination	finding
1	Whether plaintiffs prove that prima facie case lies in their favour ?	No.
2	Whether plaintiffs prove that the balance of convenience is in their favour ?	No.

3	Whether plaintiffs prove that they will suffer irreparable loss or injury if interim relief as prayed is not granted in their favour ?	No.
4	What Order ?	As per final order

REASONS

AS TO POINT NOS. 1 TO 3 :-

10. As the points 1 to 3 are interlinked, they are discussed together.

11. A specific prayer by plaintiffs under present application is to restrain defendants from disturbing plaintiffs' possession in suit property. At the outset it is pertinent to note here that suit property is entire property at Gat No. 283 totally admeasuring 110.3 Are. In paragraph No. 3 of the application as well as plaint, plaintiffs have averred that along with defendant 7 they are entitled for ½ share in the suit property. In paragraph No. 6 of application plaintiffs have averred their possession over the area admeasuring 69.3 Are in the suit property. However, plaintiffs have not categorically described the said 69.3 Are area in the suit property by giving its four boundaries, especially when they are claiming possession over a particular portion of suit property.

12. Thus, though for a moment it is assumed that plaintiffs along with defendant 7 are holding ½ portion of suit property or 69.3 Are area in suit property, in that case also in absence of specific description of the said portion the interim relief of injunction as prayed can not be granted. If in the absence of such description the relief as prayed is granted, then it will result into chaos.

13. Apart from that, while deciding instant application it is necessary to see whether plaintiffs have establish their prima facie possession in the suit property. To show their possession plaintiffs have placed reliance upon the 7/12 extracts of the suit property since year 1961 to 2009. Plaintiffs have also placed reliance upon the mutation extract dated 09/08/1952 and the mutation extract dated 13/03/2015 in respect of the tenancy. They have also tried to establish their possession with the help of mutation entry No. 317.

14. From the mutation extracts on record it appears that the names of Hanama and Bhujanga are recorded as tenants to the suit property since 1948-1949. The mutation entry No. 317 also records the names of Hanama and Bhujanga in “other rights column” of suit property as protected tenants. The 7/12 extracts for the years 1961-1971, 1979-1990, 1991-2000, 2000-2009 also record the name of Bhujanga in crop cultivation column along with the entry “खुदद”.

15. Referring the entries pertaining to name of plaintiffs' grand father Bhujanga in crop cultivation column of 7/12 extract mentioned here-in-above Ld. Advocate for plaintiffs has vehemently argued that from these entries plaintiffs' possession in the suit propety is established.

16. However, this argument is not acceptable. Because, admittedly the 7/12 extracts and the mutation entries relied upon by plaintiffs do not record plaintiffs' names. The 7/12 extract record the name of Bhujanga in crop cultivation column till year 2009. However,

it is pertinent to note here that, plaintiffs themselves have filed on record the death certificate of Bhujanga at Exh. 16 Sr. No. 3, and as per said document, Bhujanga has expired long back on 20/07/1970. Thus, the entries in crop cultivation column are pertaining to dead person since year 1970.

17. Though, for the sake of moment if it is assumed that under the entry of name of Bhujanga, plaintiffs are holding possession in the suit property, in that case also the entry of Bhujanga's name in crop cultivation column is continued till year 2009 only. The 7/12 extracts produced on record by defendants for the period of 2008-2009 to 2017 do not bear the names of plaintiffs. The suit is in respect of agricultural land. Considering nature of suit property, the entries in 7/12 extract plays vital role while forming prima facie opinion pertaining to possession over the suit property, as the entries in 7/12 extract attract presumptive value, unless they are rebutted.

18. Ld. Advocate for plaintiffs vehemently argued that the name of Bhujanga has suddenly disappeared from year 2009 from the 7/12 extract. Further, the 32-M certificate relied upon by defendants is in the name of dead person. Thus, the presumptive value of entries in 7/12 extract produced by defendants is apparently rebutted. Hence, the 7/12 extracts since 2009 to 2017 relied upon by defendants do not attract presumptive value.

19. However, this argument is also not acceptable. Because, admittedly the 7/12 extracts of suit property till year 2009 record the name of dead person in crop cultivation column. Since year 2009 the

name of said dead person is disappearing. Moreover, defendants 1 to 6 contend that the proceeding under tenancy Act was conducted and pursuant thereto defendants have paid the consideration. Thus, the certificate is issued in the name of Late Hanma. Accordingly defendants have become owner of the entire suit property. Hence, their names are appearing in 7/12 extract of the suit property for its entire area.

20. To support these contentions, defendants have filed on record the original payment receipts bearing challan Nos. 31, 17, 90, 7, 166, 78, 11, 276 and 47 at Sr. No. 1 to 9 at list Exh. 29, the original notice pertaining to proceeding U/s 32-G of the Tenancy Act, issued in the name of Hanama at Sr. No. 10 at Exh. 29, and the original certificate dated 27/06/1978 issued in the name of Late Hanama at Sr. No. 11 at Exh. 29.

21. Pointing the documents mentioned in above paragraph, Ld advocate for plaintiffs vehemently argued that the proceeding U/s 32-G as contended by the defendants had never conducted. The documents relied upon by defendants are bogus and fabricated. He also referred the letter dated 31/08/2015 issued by Tahasildar, Radhangari and addressed to plaintiff and argued that, vide said letter Tahasildar, Radhanagari himself has made it clear that the documents pertaining to proceeding U/s 32-G bearing No. Durgamanwad/44 are not appearing in his office despite due search. Thus, the certificate is false and bogus.

22 However, mere on the basis of said letter prima facie it can not be said that the proceeding under Sec. 32-G of Tenancy Act, was

not conducted. Because, defendants have produced on record the original notice, payment receipts and certificate U/s 32-M of Tenancy Act dated 27/06/1978. Considering these original documents prima facie it appears that the proceeding U/s 32-G of Tenancy Act was conducted. Further, vide letter dated 31/08/2015 Tahasildar does not state that the tenancy proceeding was not conducted. Certificate records that Hanama was tenant and he was required and has deposited Rs. 1012.77/- Paise as price of the land. Hence, he is certified as deemed purchaser of the suit property.

23. Thus, in view of the material on record it can not be said that the presumptive value of entries on 7/12 extracts of suit property is rebutted. If that is the case the 7/12 extract does not record plaintiffs' name in either ownership or crop cultivation column on the date of filing of suit. On the contrary the names of defendants 1 to 6 are recorded in crop cultivation as well as ownership column. Thus, prima facie it appears that plaintiffs are not holding possession over the suit property. If that is the case, the prima facie case for grant of interim relief is not in plaintiffs' favour. Resultantly, balance of convenience also leaves plaintiffs' side. As plaintiffs are not holding possession over the suit property, no irreparable loss or injury would cause to them if the application is rejected. Hence, points 1 to 3 are answered in negative and in answer to point No. 4 following order is passed :-

ORDER

Application is rejected.

Radhanagari.

Date : 14-11-2018.

(M. H. Shitole)

Civil Judge, Jr.Dn., Radhanagari.

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

Name of the Stenographer	U.S.Telang
Name of Court	Civil Judge, Junior Division & Judicial Magistrate, First Class, Radhanagari.
Date of Dictation	14/11/2018
Order signed by the P.O. On	14/11/2018
Order uploaded on	14/11/2018