



ORDER BELOW EXH. 5 IN R.C.S. NO. 5/2020

CNR-MHKO20000032-2020

This is an application made by the plaintiffs for seeking temporary relief of injunction restraining the defendants from making illegal construction in the property block No.10, admeasuring 10 R., situated at village Panore, Taluka Panhala District Kolhapur, more particularly described in para No.1 of the application. (for brief 'the suit property').

02. It is contended that the suit property is ancestral property of Akaram Devaba Jadhav, Sakharam Devaba Jadhav, Tukaram Devaba Jadhav and their two sisters Rukminibai and Anandi. The name of Akaram Devaba Jadhav is entered to revenue record of the suit property for himself and his two brothers as manager of the family. The partition of suit property is not effected yet between Akaram, Sakharam and Tukaram, by metes and bounds. The plaintiffs are in joint possession of the suit property since their ancestors. In such circumstances, on 23-01-2020, the defendants suddenly entered in the suit property and tried to dig foundation in the wasteland area for the purpose of making construction adjacent to main road of village Panore. The plaintiffs given them understanding that partition of the suit property is not effected yet by metes and bounds. Hence, they cannot make construction. However, the defendants threatened the plaintiffs and said that they have purchased certain area out of

the suit property and they are going to make construction in the said area. The plaintiffs have no concerned with the same.

03. As such, the defendants are trying to make illegal construction in the suit property. In fact, the plaintiffs or their ancestors have not sold any specific area out of the suit property by mentioning boundaries to the defendants. Neither the plaintiffs nor their ancestors have executed any sale deed in favour of the defendants. The defendants by taking disadvantage of illegal sale deed, put construction material on the suit property for the purpose of making illegal construction on strategic location and by digging, started construction in the suit property. If, the defendants made construction in the suit property as above, nature of the suit will be changed and the plaintiffs would put to irreparable loss. Ultimately, the plaintiffs sought relief of temporary injunction against the defendants till final disposal of suit.

04. The defendants filed their say at Exh. 18 and admitted that name of Akaram Devaba Jadhav is entered to the revenue record of suit property for himself and his two brothers as manager of the family. However, further they denied all the contentions in the application. It is asserted that plaintiffs' ancestor Akaram Devaba Jadhav, out of legal necessity, executed registered sale deed of 05 R. in block No.10 on 14-02-1990 in favour of defendants' ancestor Dinkar Dattatray Patil.

05. The defendants' ancestor Dinkar Patil was in

possession of the area adjacent to road at western side in the suit property, since 1965. In the said 05 R. area, he had flour mill and entry of said flour mill was entered to record of Grampanchayat Panore. He also obtained electricity connection from M.S.E.B. for said flour mill and the ancestors of the plaintiffs and other villagers coming for grindings. Accordingly, possession of 05 R. adjacent to road at western side of the suit property, was made confirmed by ancestor of the plaintiffs in favour of ancestor of the defendants, after its purchase. The defendants made new construction of said flour mill as its previous structure became weak. The ancestor of plaintiffs never objected to possession of the defendants since 1965. As such, prima facie the plaintiffs admitted possession of the defendants.

06. In the year 2001, the defendants made certain changes in flour mill and constructed double storied building for residential purpose. Accordingly, entry of said construction is entered to Grampanchayat record. At present construction of said house is dilapidated. Therefore, defendant No.1 started RCC construction in the said area by demolishing old one. The defendants are making construction in their 05 R. area only and not more than that. The defendants are in possession of 05. R. since 1967. They have no alternative house other than house in the suit property where construction is in progress. If said construction is stopped, they would put to irreparable loss as construction material worth Rs. 4,00,000/- is lying at site. Moreover, their wives and children would become homeless, if injunction is granted as sought. On aforesaid grounds, the

defendants prayed to reject the present application.

07. Heard both the learned advocates for respective parties. From the pleadings and documents on record, following points arise for consideration. I have recorded finding to each point for the reasons to follow:

Sr.No.	POINTS	FINDINGS
1.	Do prima facie case exist in favour of the plaintiffs ?	Yes.
2.	In whose favour balance of convenience lies?	In favour of the plaintiffs.
3.	To whom irreparable loss would be caused if temporary injunction is refused ?	To the plaintiffs
4.	What order?	Application is allowed.

REASONS

As to points No. 1 to 3 :

08. All the above points are interlinked with each other. Hence, to avoid repetition, those are taken together for discussion.

09. To ascertain as to whether the plaintiffs have made out prima facie case in their favour, it is necessary to have regard to relevant documents on record and to see whether there is prima facie evidence on record which could sufficient to grant relief in favour of the plaintiffs. It is also necessary to see rebuttal evidence of the defendants, if any to adjudicate the present application on merit. Both parties have filed certain documents on record.

However, only those documents are referred herein below which are relevant and necessary for deciding the present application.

10. As asserted by the plaintiffs, partition of the suit property is not effected yet by metes and bounds. In support of their contention, the plaintiffs along with list at Exh. 3 and 11, filed 7/12 extract of block No. 10, M.E. No. 212 and photographs at site. On perusal 7/12 extract of suit block No. 10, it appears that names of plaintiffs as well as defendants are entered to respective areas in ownership column. On perusal of M.E. No.212, it transpires that after death of plaintiffs' ancestor Devaba Sadu Jadhav, names of his sons Akaram, Sakharam, Tukaram and daughters Rukminibai and Anandi are mutated to the properties including the suit property block No.10, being his heirs. It further reflects from said entry that name of Akaram is mutated to the said lands as manager of the family.

11. On the other hand, it is plea of the defendants that the plaintiffs' ancestor Akaram Devaba Jadhav, out of legal necessity, executed registered sale deed of 05 R. in block No.10 on 14-02-1990 in favour of defendants' ancestor Dinkar Dattatray Patil. In support of their averment, the defendants along with list at Exh.17 filed copy of sale deed dt. 14-02-1990 in respect of 5 R. land in suit block No.10, assessment lists showing entries of flour mill and house G.P. No. 3, 4, 6/1 and 7 from the year 1976 to 2020, electricity bills, tax receipts and photographs of old house.

12. It is necessary to mention here that except the sale

deed, no other document confers any right or title on the defendants relating to the suit property. Therefore, it is necessary to have regard to copy of sale deed filed by the defendants on record. On perusal of sale deed dt. 14-02-1990, it appears that Akaram Devaba Patil (ancestor of the plaintiffs) executed said sale deed in favour of Dinkar Dattatray Patil (ancestor of the defendants) in respect of 5 R. land in block No. 10. The defendants claiming their possession on the basis of alleged sale deed. However, recital in the sale deed, specifically shows that Akaram has sold 5 R. area of his joint occupancy and in the capacity of manager of the family. It is also significant to note that no specific boundaries are mentioned of the said area in the sale deed. Thus, prima faice it is come on record that plaintiffs' ancestor Akaram alienated undivided share or interest in the suit property to the defendants' ancestor Dinkar Patil.

13. In respect to position of vendee of undivided share, the Hon'ble Apex Court in the Judgment of **Ramdas vs. Sitabai** ruled that "*Without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share. Reliance in this regard may be placed to a decision of this Court in M.V.S. Manikayala Rao Vs. M. Narasimhaswami & Ors. [AIR 1966 SC 470], wherein this Court stated as follows:*

"Now, it is well settled that the purchaser of a coparcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. His only right is to sue for partition of the property and ask for allotment to

him of that which, on partition, might be found to fall to the share of the co- parcener whose share he had purchased."

14. In view of the aforesaid position, there could be no dispute with regard to the fact that an undivided interest of co-sharer may be a subject matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the Court. Thus, in view of aforesaid ratio, it is clear that in present suit, Akaram had right to sale his undivided share but possession cannot said to be handed over to the vendee i.e. ancestor of the present defendants unless the property is partitioned by meters and bounds. Even, he is not entitled to joint possession along with other co-sharers. But he could work-out his rights only by a suit for partition and his right to possession would be from the period when a specific allotment of share is made in his favour. As a matter of fact, since purchase of undivided share by ancestor of the defendants, neither he nor the defendants instituted a suit for partition to get their share separated from other co-sharers. Therefore, the defendants have no right to claim their possession over any particular or specific area in the suit property.

15. The defendants are relied upon ratios in following judgments:

1. **M/s. Seemax Construction (P) Ltd. vs. State Bank of India, AIR 1992 DELHI 197**, wherein the Hon'ble Delhi High Court held that "*the suppression of material fact by itself is a sufficient ground to decline the discretionary relief of injunction. A*

party seeking discretionary relief has to approach the court with clean hands and is required to disclose all material facts which may, one way or the other, affect the decision."

2. **M/s. Gujarat Bottling Co.Ltd. vs. Cocoa Cola Company, AIR 1995 SC 2372**, wherein the Hon'ble Apex Court held that "Under order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame."

16. Considering aforesaid ratios, in present suit, prima facie the plaintiffs appear to have not suppressed any material fact from the Court. Hence, the judgments on which the defendants are relied, are not applicable to the case in hand being based on different facts and circumstances.

17. In present suit, as per 7/12 extract of suit block No. 10, prima facie the plaintiffs appear in possession of the suit property. Though names of the defendants are also entered to 7/12 extract, still their share is not worked-out and as held above, their right to possession would be from the period when a specific allotment of share is made in their favour. From photographs on record, prima facie the construction appears to be in progress. The defendants are also not denying about alleged construction in the suit property. They have specifically stated about progress of construction in their say. Thus, without working out their specific

share in the suit property, the defendants cannot make construction on any specific area of the suit property. If they made construction on any strategic location of the suit property, the plaintiffs would put to irreparable loss than the defendants.

18. Thus, cumulative effect of above discussion is that prima facie the plaintiffs succeeded in establishing their case. In such circumstances, balance of convenience lies in favour of the plaintiffs. Therefore, it is just and proper to allow the application made by the plaintiffs. Hence, following order.

ORDER

1. Application is allowed.
2. The defendants are hereby restrained temporarily from making construction in the suit property block No.10, admeasuring 10 R., situated at village Panore, Taluka Panhala, till final disposal of the suit.
3. Costs in cause.

Date : 25/02/2020.

(V. V. Khulape)
Civil Judge Junior Division,
Kale-Kherivade.