

ORDER BELOW EXH. 51 IN RCS NO. 407/2015

(Subhash & oths. Vs. Chandrakant & oths.)

01. Heard both the parties. Perused R & P, the application and say failed thereon. Ex-parte order came to be passed against defendants No. 3 and 4 on 10.10.2016 and now they have filed the application to set aside the same on the ground of medical treatment. Though medical certificate is not filed along with the application but there is affidavit of defendants No. 3 and 4 in support of their contention. Therefore, there is no reason to disbelieve the grounds shown by them.

02. Moreover, the suit is in respect of immovable property and the valuable rights of the parties are in it. Therefore, to have a fair trial on merit it is necessary to allow the application. Hence, I pass following order.

ORDER

Application is allowed and ex-parte order is set aside subject to payment of costs of Rs. 500/- to the plaintiff.

Date : 31.07.2017.

(R.P. Kulkarni)
Civil Judge Senior Division
Nilanga.

ORDER BELOW EXH. 55 IN RCS NO. 407/2015

01. Heard both the parties. Perused the application and say. Defendants No. 2 and 5 prayed to set aside the No W.S. order on the ground that defendant No. 1 resides at Ahmadabad, Gujarat State. To collect the required documents and documents of previous litigation time consumed. Therefore, they cannot file the written statement within limitation. The plaintiff opposed the application on the ground that there is no medical certificate in support of the application and costs of Rs. 5,000/- be imposed.

02. Upon hearing both the parties, it appears that the defendants No. 2 and 5 shown the delay to file the written statement as they cannot collect the documents of the property and previous litigation. There is no reason of medical treatment shown by them in the application. Therefore, there is no substance in the objection raised by the plaintiff. On the contrary, the application is well supported by the affidavit. Therefore, there is no reason to disbelieve the grounds shown for the delay.

03. Moreover, the suit is not in respect of immovable property. Valuable rights of the parties are involved in it. The pleadings of the defendants will be helpful to decide the

controversy between the parties on merit. Hence, I pass following order.

ORDER

No W.S. order passed against Defendants No. 2 and 5 is set aside subject to costs of Rs. 500/-.

(R.P. Kulkarni)
Civil Judge Senior Division
Nilanga.

Date : 31.07.2017

JUDGMENT

01. Present suit is file for perpetual injunction to restrain defendant for any one claiming on behalf of her from causing obstruction to the favour of the plaintiff over the suit property bearingin land block NO. 222 situated at village Tadmugli, Tq Nilanga Dist. Latur. Hereinafter it is referred as 'suit property'.

02. In short, it is the contention of the plaintiff that suit property was originally owned by Vijayakumari Sharma and from her they have purchased the suit property on 05.03.2008 vide sale deed No. 668/08. Though the property has purchased in the year 2008 but said property was in possession of the plaintiff as a

Bataidar since 2002. There was previous litigation between Vijayakumari Sharma and one Kalpanadevi and the result of that litigation goes in favour of the Vijayakumari is not having right title in the suit property in respect of that she has obstructing the possession of the plaintiffs over the suit property. Mutation entry is also certified in the name of plaintiffs after due inquiry by Tahsildar for file No. 2008/JM/Kavi/220/1. The plaintiff has also causing obstruction to them. Therefore cause of action arose to file the suit. Lastly, the plaintiffs prayed to decree the suit.

03. Suit proceeded ex-parte against the defendants.

04. The points for determination allowing my findings thereon are as under :

01. Does the plaintiff prove his lawful possession on the suit property ?

02. Does the plaintiff prove the obstruction at the hands of the defendant No. 2 ?

03. Are plaintiffs entitled for the relief of perpetual injunction ?

04. What order and decree ?

REASONS

01. The plaintiff No. 1 has examined himself as PW-1 at

Exh. 15, evidence of P.W.-2 Annarao Karmarkar is at Exh. 16, evidence of Madhav Gunjote is at Exh. --. The plaintiff has filed on record 7/12 extract at Exh. 6. Sale deed at Exh. 20, copy of order passed by Hon'ble Supreme Court is at Exh. 22, copy of order passed by the Hon'ble High Court is at Exh. 23. Tax paid receipts are below Exh. 26, evidence close pursis at Exh. 24.

As to points No. 1 to 3:

Heard the advocate for the plaintiff. Perused the pleading. As per the contention of the plaintiffs they were cultivating the suit property since 2002 and vode sale deed Exh. 20 they have purchased the suit property from Vijayakumari. Mutation entry is also certified. Defendant is no way concerned to the suit property but she is obstructing to the possession of the plaintiffs. If thie pleadings is taken in to consideration, to prove the lawful possession of the plaintiffs has examined himself as well as witness on the sale deed Madhave Gunjote. The plaintiff has also examined Annarao PW-2 to support his contention about the possession. Sale deed Exh. 20 goes to show that Vijayakumari hs sold out the suit property to the plaintiffs. It is also specifically resisted in the sale deed that since 2002 suit the date of sale deed the defendants were cultivating the land and said possession is confirmed by way of sale deed Exh. 20. Therefore, there is the supportive documentary and oral evidence in support of the contention of the plaintiff. Further though the defendant is served with the suit summons, he failed to appear therefore there is no

rebuttal pleading and evidence. As there is no rebuttal pleading and evidence and cross-examination to the plaintiff and their witnesses. There is no reason to disbelieve the contention of the plaintiff that he is the lawful possessor of the suit property.

9. Further, the plaintiff has also filed on record the copies of the previous litigation between LRs of Nandlal Sharma and Vijayakumari Sharma which goes to show that up to the Hon'ble Supreme Court the judgment and decree passed in RCS No. 478/97 is confirmed as delay condonation application filed by the LR.s of Nandlal Sharma is came to be rejected. Therefore, it appears the result in favor of the Vijayakumari to his predecessor in title of the plaintiff as the plaintiffs have prayed as the plaintiffs have proved their lawful possession by filing oral and documentary evidence, it is necessary to record the evidence on point No. 1 in affirmative

Further, the defendant has not denied that she is obstructing to the possession of the plaintiffs. Therefore, this fact is also proved by the plaintiff. When there is obstruction of the lawful possession of the plaintiffs, it is necessary to restrain the defendant by way of perpetual injunction so as to protect the possession of the plaintiff. If declaratory relief of perpetual injunction is not given to the plaintiffs then the defendant will oust the plaintiffs or dispossess them. In that event the loss will cause to the plaintiffs. Therefore, the plaintiffs are entitled for the relief of perpetual injunction. Hence, I record my findings to points NO. 2 and 3 in the

affirmative.

As to point No. 4

In view of above discussion the plaintiffs proved there lawful possession and obstruction at the hands of defendant. Therefore , suit is liable to be decreed. Hence, I pass folloing order.

ORDER

- 01 Suit is decreed with costs.
02. The defendant or anyone claiming on behalf of her are perpetually restrained from causing obstruction to the possession of the plaintiffs over the suit property as described in plaint para No. 1.
03. Decree be drawn up accordingly.

Sd/-
(R.P. Kulkarni)
Civil Judge Senior Division
Nilanga.

Date : 31.07.2017