

R.C.S.No.332/2017

Vishnu vs. Vishwanath and other.

Order passed below Exh.05

This is an application filed by the plaintiff for temporary injunction against defendants.

Suit property :

2. 20R land from Survey No.37 which is situated at Uti, Tq. AUSA which is mentioned in the para 5 of present application (in short 'suit property').

3. **In short the plaintiff's case is as under;**

The plaintiff is resident of AUSA. Defendant No.1, 2 and father of defendant No.3 and another one Govind are the real brothers of each other. The sister of plaintiff namely Parvati has married with Govind. The Govind has drove out Parvati from his house. The defendants and Govind has owned suit property and another property which is situated at Uti and Shridhon, Tq. Kallamb, Dist. Osmanabad. The Parvati has filed suit for maintenance against Govind that is RCS No.148/1993. The RCS No.148/1993 was decreed on 24/7/1995. Thereafter, the decree holder that is Parvati has filed RD No.45/1995 for execution. In decree of RCS No.148/1993 the charge of maintenance kept on the properties of defendants. Thereafter, the Parvati has filed another execution application that is RD No.22/2004 for recovery of maintenance. In that proceeding, the suit property was auctioned under execution of decree. The suit property was purchased by plaintiff in auction. The sale certificate issued by Court in favour of plaintiff on 20/1/2009. The possession of suit property was handed over to plaintiff on 19/12/2011. In these

circumstances plaintiff is owner and possessor of suit property. The defendants has obstructed to possession of plaintiff. Therefore, plaintiff filed this suit for perpetual injunction. By present application, the plaintiff prayed interim relief against defendants that is restraining them from obstructing to his possession over the suit property till disposal of suit. The plaintiff lastly prayed for allowing the application.

4. The defendants appeared and filed their written statement at Exh.20. They denied all allegations and prayer of plaintiff. They admitted the suit property. They also admitted that other properties situated at Uti and Shridhon. According to them, the Govind is not exclusive owner of suit property. Their shares are involved in the suit property. The suit property is joint family property. They are partitioned property which is situated at Shiradhon, but not partitioned properties situated at Uti. Defendant No.1 and 2 have four sisters. Their shares also involved in the suit property. Till today the suit property is not partitioned. They are jointly owned suit property. The Govind has given 64R land in favour of Parvati. That compromise between Parvati and Govind is false one. The Govind and Parvati wanted to drove their share from suit property. Suit property is not in possession of plaintiff. Plaintiff has not owner of suit property. The suit is false one. They lastly prayed for rejection of application.

5. Heard learned Advocate Shri. B.G. Patil for plaintiff and Shri. B.B. Gadekar for defendant. The Advocate for defendants has filed written argument.

6. Following points are arises for my determination to which I have given my findings thereon along with my reasons.

Sr.No.	Points.	Findings
1.	Whether the plaintiff has prima facie case for grant of temporary injunction as prayed for?	Yes.
2.	Whether the plaintiff would suffer irreparable loss, if temporary injunction is refused?	Yes.
3.	Whether the balance of convenience lies in favor of the plaintiff?	Yes.
4.	What order?	Application is allowed as per final order.

Reasons

7. Prima facie case, balance of convenience, and irreparable loss are the three ingredients for temporary injunction. The plaintiff must establish the case with these ingredients.

As to point No.1 to 3.

8. The plaintiff contended that he is acquired suit property in auction. The sale certificate is issued in his favour. The Bailiff has delivered possession of suit property to him. Other hand defendants contended that the suit property is joint and they are jointly owned. On perusing record it appears that the name of plaintiff was mutated on revenue record in respect of suit property. On perusing original sale certificate which is issued by this Court it appears that the sale certificate is in respect of suit property. The suit property was purchased by plaintiff in auction sale. The plaintiff is owner of suit property from issuing the sale certificate. On perusing ferfar No.598 it appears that the name of plaintiff is mutated on revenue record as per sale certificate. On perusing

Bailiff report of Shri. Mangrule in RD No.22/2004 it appears that the possession of suit property is given to the plaintiff. On perusing panchnama dated 19/12/2011 in RD No.22/2004 it appears that the possession was delivered to the plaintiff. On perusing possession receipt dated 19/12/2011 it appears that the possession of suit property was accepted by plaintiff. From these record prima-facie it appears that the plaintiff has purchased suit property in auction sale. The sale certificate is issued in favour of plaintiff. The name of plaintiff mutated on revenue record. The Bailiff of this Court has delivered possession of suit property to the plaintiff. The possession of suit property was accepted by plaintiff.

9. The defendant contended that the suit property is joint family property and their share also involved in the suit property. On perusing record it appears that the title and possession was given to the plaintiff in execution of decree passed in RCS No.148/1993. That decree was not challenged and not set aside till today. The execution filed by plaintiff that is RD No.45/1995 for execution of decree passed in RCS No.148/1993. In that execution proceeding, defendant No.1, 2 and father of defendant No.3 has taken objection for execution. On perusing the record it appears that the defendant No.1, 2 and father of defendant No.3 has taken objection for executing decree passed in RCS No.148/1993. But it was not pressed by them on 13/11/2003. Thereafter, defendant No.1, 2 and father of defendant No.3 has filed Civil M.A.No. 17/2000 before this Court for excluding their shares from auction. On perusing the copy of Exh.01 of Civil M.A.No.17/2000 it appears that the proceeding was not conducted by defendants and it was dismissed in default. From these record it appears that the defendant has well knowledge about the decree passed and they are also well knowledge about the execution, auction sale and possession of plaintiff. Further the defendants has filed RCS No.35/2012

against present plaintiff and Parvatibai for perpetual injunction. On perusing copy of Exh.01 it appears that the suit also dismissed in default on 6/1/2016. Considering these record prima-facie it comes on record that the defendants have taken various objection in executing decree passed in RCS No.148/1993.

10. On perusing record prima-facie it appears that the plaintiff has acquired suit property from auction and in auction the sale certificate issued in favour of plaintiff it prima-facie shows that the plaintiff is owner of suit property. The Bailiff of this Court has given possession of suit property. The plaintiff has accepted possession of suit property. This record shows that prima-facie the plaintiff is in possession of suit property. The defendants has taken various objection. They are only contended that the suit property is joint family property. But in my view from the auction the suit property is not part of joint family property. At the time of filing of this suit, the suit property is not joint family property. In these circumstances I am not found any substance in the submission of Advocate for defendant. Considering all above discussion I hold that the plaintiff is successful to show prima-facie case. The balance of convenience is also in favour of the plaintiff. The plaintiff proved his prima-facie title and possession over the suit property. In these circumstances I am coming to conclusion that the application needs to be allowed. If application allowed there will be no any loss caused to defendant. Other hand if rejected, then, irreparable loss caused to plaintiff. Hence, I answer point No.1 to 3 in the affirmative, and in answer to point No.4, I proceed to pass the following order.

ORDER

1. The application is allowed.

2. The defendants themselves or their agents or servants are temporarily restrained from causing obstruction to plaintiff's possession over the suit property, till final disposal of this suit.
3. No order of cost.

Date : 28/06/2018

(S. P. Jadhav)
2nd Jt. Civil Judge J.D., AUSA.