

Reg. Civil Suit No.386/2013
Shiv Chatrapati E. S. Latur/ Ratan**ORDER BELOW EXH.05**

{1} This is an application for the relief of temporary injunction under Order- XXXIX Rule-01 of the Code of Civil Procedure.

{2} At out set the case of the plaintiff Society is that, Defendant No.01 is father of defendants No.02 to 04. Defendant No.05 is wife of defendant No.02. The plaintiff Society is a registered society. Plaintiff No.01 is secretary of the Plaintiff Society since 1967-68 up till now. Plaintiff Society has purchased 11 A. 16 G. land out of S.N. 6/A/1 on 01.12.1976 through a registered sale deed. The plaintiff Society with prior permission of Charity Commissioner has sold 9 A. 12 G. land for meeting out financial crises. The plaintiff society is left with 04 A. 22 G. land as described in para No.03 of the plaint. { Hereinafter referred as suit land for brevity }. The plaintiff society is owner and possessor of the suit land and entries to that, extent has been passed in revenue record. Plaintiff No.02 is cultivating the suit land since last three years at consideration amount of Rs.10,000/- per annum. Defendant No.01 was working as agricultural labour as *salgadi* since purchase of suit land by the plaintiff society. In the year 1995-96, when The plaintiff society has sold out the land, defendant No.01 has

moved request application to effect that, he could not work in the suit land and has prayed to give other in the plaintiff society. Defendants are having no concern with the suit land. However, they have filed a suit bearing RCS No.377/1997 in AUSA court, it was dismissed on 12.08.2000. They have also filed a suit bearing RCS No.350/2010 for declaration of ownership. It was also dismissed on 15.11.2011. The defendants without having any legal right are creating obstruction and interference into possession of the plaintiff society over the suit land. Therefore, plaintiff No.02 has filed report against them at police Station AUSA. The police has taken preventive action against the defendants under section 107 of the Code of Criminal Procedure. The defendants in collusion with each other have erected three tin shed in West-South corner of the suit land in May-2013 over 02 G. land as described in para No.09 of the plaint. { Hereinafter referred as Shed area for brevity}. When the defendants were asked about the same, the defendants have said that, it is temporary shed and they will remove it in few days. Then the defendants have created obstruction and interference into possession of the plaintiff society over rest of the suit land and have also denied to remove tin sheds. If the defendants are not restrained by the orders of the court, the plaintiff society will have to suffer irreparable loss. On these ground, the plaintiff society has prayed for restraining the defendants from causing obstruction and interference into it's

possession over the suit land and from making any alteration in tin sheds till final disposal of the suit.

{3} The defendants have resisted the application through Written Statement Exh.35 read with pursis Exh.37 and 54 and have admitted registration of the plaintiff society according to law and that, the plaintiff society has alienated 11 A. 16G. Land on 01.12.1976. They have further admitted that, they have filed suits bearing RCS No.377/1997 and RCS 350/2010 and are dismissed by the court. However, have denied all adverse allegations made against them in Toto. In their additional say they have submitted that, they are in possession over the suit land since last 37 to 40 years. They have personally cultivated the suit land. Defendant No.01 was cultivating 11 A. 16 G. land owned by the plaintiff society on *batai* basis since 1976-77. Plaintiff No.01 has moved a proposal of sell of said land towards defendant No.01. In 1990, defendant No.01 has made oral agreement of purchase of 03 H. 70 R. land out of Block No.241 for consideration amount of Rs.3,25,000/-. Defendant No.01 has paid Rs.25,000/- and it was agreed that, he will pay Rs.50,000/- per annum. Accordingly, during period in between 1991-92 to 1996-97, he has paid entire amount to plaintiff No.01. Since then, defendant No.01 is in possession over the suit land as lawful owner. Defendant No.01 has constructed a house in the suit land, as he was

cultivating the suit land on *batai* basis in 1976-77. In 1989 said house became pray of fire and was burnt. On 07.11.1989, Tahsildar AUSA has prepared Panchanama, showing possession of defendant No.01. In the year 1997, defendant No.01 has requested plaintiff No.01 to execute sale deed as agreed. In order to deprive defendants from their legal right, plaintiff No.01 has sold 01 H. 86 R. land to Gangabai Patil and Kishan Ghatge on 20.03.1997. On 25.06.1997, defendant No.01 has moved an application for cancellation of mutation entries. As plaintiff No.01 has alienated the suit land in possession of defendant No.01, he has filed a suit for perpetual injunction against plaintiff No.01 and chairman of the plaintiff society. But, it was dismissed on point of Jurisdiction. Defendant No.01 being old and illiterate was not having knowledge about judgment of court, therefore, appeal was not preferred by him. In June 2008, plaintiff No.01 has created obstruction and interference into possession of defendant No.01 over the suit land. Therefore, he has filed report at police station. Defendant No.01 has filed a suit for relief of declaration of ownership bearing RCS No.350/2010 and it is pending. Said suit was dismissed as against plaintiff No.02 for want of steps. The chairman and secretary of the plaintiff society were creating obstruction, therefore, defendant No.01 has moved report to police station and an application to Tahsildar for taking cultivation entries in his name. Said application was dismissed without following proper

procedure. Defendants are in physical possession over the suit land are residing over the suit land by construction of house bearing House No.448, 462, 463, and 464. He has paid local taxes since the year 2005. The present suit is not within limitation. The plaintiff society has filed false application against them. On these grounds, they prayed for dismissal of application with costs.

{4} **The Points for determination which arose before me for consideration are reproduced below along with my findings thereon and respective reasonings thereto;**

	POINTS FOR DETERMINATION	FINDINGS
1}	In whose favour does prima facie case lies?	The Plaintiff Society.
2}	In whose favour does balance of convenience does lies?	The plaintiff Society.
3}	Who will suffer irreparable loss in event of non grant of relief of temporary injunction or non grant of said relief?	The Plaintiff Society.
4}	What Order?	Application Allowed.

REASONINGS

{5} **AS TO POINT NO.01 to 03 :-**

Heard counsel for the plaintiff society and for the defendants and perused the record. There is no dispute in the present case in respect of previous ownership of the

plaintiff society over the suit land. It is also admitted fact in present suit that, defendant No.01 has filed suits bearing RCS No.377/1997 and 350/2010. Out of these two suits, suit bearing RCS No.377/1997 is dismissed and suit bearing RCS No.350/2010 is Sub-Judice before this court. It is also an admitted fact that, defendant No.01 was in possession over the suit land for some period. However, the capacity in which he was in possession is disputed fact. The plaintiff society and the defendants are raising their plea of title and possession over the suit land. The plaintiff society is claiming it's title and possession over the suit land as purchaser from predecessor in title of the suit land, whereas, defendants are claiming their title and possession over the suit land on basis of agreement to sell alleged to be entered into by secretary of the plaintiff society with defendant No.01 and accepting entire agreed consideration amount.

{6} The documentary evidence on record consisting of 7x12 extract of the suit land for the year 1991-92 to 2000-01 Exh.06, 7x12 extract of the suit land for the year 2001-02 to 2012-13 Exh.07 to 16 shows ownership and possession entires in name of the plaintiff society. There in no prima facie document on part of the defendants showing their title and possession over the suit land in any capacity. Thus, prima facie title and possession of the plaintiff society over the suit land is duly established by it.

{7} It is not disputed that, defendant No.01 was in possession over the suit land for some period. The plaintiff society is claiming that, defendant No.01 was agricultural labour as *salgadi*, whereas, the defendants are claiming that, defendant No.01 was in possession over the suit land initially on *batai* basis and then on basis of oral agreement to purchase the suit land. Keeping apart theory of defendants as to oral agreement, possession of defendant No.01 over the suit land on *batai* basis, in no way can be branded as possession of defendant No.01 himself. It is basically possession of the plaintiff society over the suit land being cultivated by taking assistance of defendant No.01. An agreement of *batai* as alleged by the defendants, can not make them possessor of the suit land in their own capacity.

{8} It is case of the defendants that, they are in possession over the suit land on basis of oral agreement to sell entered into between defendant No.01 and secretary of the plaintiff society. However, there is prima facie evidence to establish that, defendant No.01 have at any time, entered into an oral agreement with secretary of the plaintiff society and has paid consideration amount to him. The defendants are claiming acquisition of title over the suit land on basis of oral agreement. But, theory of the defendants inconsistent with provisions of Transfer of Property Act. No registered documents is executed to that

extent. There is no prima facie evidence to establish possession of any of defendant over the suit land. Therefore, in my opinion, no valid title is transferred to defendants. Accordingly, in my opinion, theory of the defendants as to title over the suit land is not susceptible one.

{9} It is the case of the plaintiff society that, the defendants have erected three tin shed in May-2013 situated in shed area and have sought relief of temporary injunction restraining the defendants from making any alteration in it. It is the case of the defendants that, they are residing in suit land by constructing houses since long. Perusal of entire revenue record shows that, there is no entry of house property in the revenue record. Existence of three tin sheds is admitted by the plaintiff society itself. The defendants have filed on record form No.08 for house properties No.462, 463, 464 and 448. On perusal of these documentary evidence, it reveals that, the defendants are in possession over the house properties bearing No.462, 463, 464 and 448 situated in Block No.241 i.e. the suit land. The receipt issued by Village Panchayat Shivani shows that, defendants have paid local taxes regularly since 2005-2006. Present situation of these house properties is not prima facie proved by the plaintiff society. Entries appearing in these documentary evidence shows, prima facie that, the theory of the plaintiff society to effect

that, defendants have erected tin shed in May-2013 is not susceptible one.

{10} **As** discussed foregoing paras, the plaintiff society appears prima facie in possession over the suit land as owner, whereas, the defendants appears in possession over the house properties situated in she area since 2005-2006. They are in settled possession over these properties. The documentary evidence consisting of cross-reports lodged by the plaintiff society and defendants shows that, there is active denial of respective rights by both parties. Entire records, shows, prima facie that, the plaintiff society is in possession over the suit land, excluding shed area and active denial of rights by the defendants. Therefore, in my opinion, prima facie case lies in favour of the plaintiff society. Accordingly, I answer Point No.01 in favour of the plaintiff Society.

{11} **The** plaintiff society appears prima facie in possession over the suit land excluding shed area, being owner thereof. In an event of non grant of relief of temporary injunction in favour of the plaintiff society, it would have to suffer illegal interference at the hands of the defendants or may have to loose it's possession. This would certainly amount to irreparable loss to it. The defendants do not appears in possession over the suit land. Therefore, no such loss can be foreseen to them, in event of grant of

relief of temporary injunction in favour of the plaintiff society. Accordingly, in my opinion, Balance of convenience lies in favour of the plaintiff society and it would suffer irreparable loss in event of non grant of relief of temporary injunction in it's favour. Accordingly, I answer points No.02 and 03 in favour of the plaintiff society.

{12} AS TO POINT NO.04:-

As discussed in foregoing paras, in view of my findings on points No.01 to 03, prima facie case and balance of convenience lies in favour of the plaintiff society to extent of the suit land, excluding shed area. It would suffer irreparable loss in the event of non grant of temporary injunction. Therefore, in my opinion, the plaintiff society is entitled for the relief of temporary preventive injunction as sought by it to extent of suit land, excluding shed area. Defendants appears in settled possession over the house properties bearing house No.462, 463, 464 and 448. Present situation of these house properties is not established by the plaintiff society. In case of grant of preventive relief as sought by the plaintiff society, as regard to these house properties situated in shed area, it will amount to an blanket injunction order without, ascertaining factual position. It is not permissible. Therefore, in my opinion, the plaintiff society is not entitled for relief of preventive injunction as sought by it, to extent of house properties termed as shed

by the plaintiff society. As the plaintiff society is entitled for the relief of temporary preventive injunction, in my opinion, present application is entitled to be allowed. However, relief of preventive injunction as to shed area is liable to be rejected. With these reasonings, **in an answer to point No.04**, I pass the following order;

ORDER

1. Application Exh.05 is allowed.
2. The defendants, their agents, servants, relatives or any person acting on their behalf are hereby restrained from creating obstruction and interference into lawful possession of the plaintiff society over the suit land, excluding shed area as described in para No.03 of the plaint till final disposal of the suit.
3. The prayer of the plaintiff society praying relief of temporary preventive injunction as to shed area is rejected.
4. Cost of the application in cause of suit.

Date:05th October,2013.

(Ravikant T. Sakhare)
Civil Judge Junior Division,
Ausa