

Order below Exh.05

(Passed on this 22th March 2017)

1] Plaintiff has filed this application under Order 39 R 1 & 2 of Code Of Civil Procedure, 1908 in respect of 95 R land out of Gat No.94 situated at village Killari, Tq. Ausa, Dist. Latur. (Hereinafter for the sake of brevity referred to as the “**The Suit property**”) for restraining the defendants from obstructing his peaceful possession .

2] Defendant No.1 to 3 filed say cum written statement at Exh.27, defendant No.5 to 9 filed written statement at Exh.38 and resisted the application.

3] Heard Learned Adv Shri.S.G.Patil for plaintiff and Learned Adv Shri. S.H.Patel for defendant No.1 to 3 and Learned advocate Shri S.M.Yerte for defendants No.4 to 9.

4] Considering the rival submissions, following points arise for determination, to which my findings thereon for the reasons are as under :-

	<i>POINTS.</i>	<i>FINDINGS.</i>
1.	Who established prima facie case ?	Defendants
2.	In whose favour balance of convenience lies ?	Defendants
3.	Who will suffer irreparable loss?	Defendants
4.	What order ?	As per final order.

:: REASONS ::

As to point Nos.1 to 3 :-

5) The discussion and appreciation of evidence for point Nos.1 to 3 is common, hence they are clubbed and answered by me in consonance for the sake of brevity and foreclosing the repetition of the facts.

6] Tersely, case of the plaintiff is that plaintiff is owner and possessor of the suit property out of which 72 R land was sold by plaintiff nominally for the security of money to Pralhad Bhosale but the possession is with plaintiff. Defendant No.5, 6 and 7 had filed Civil Suits No.644/2013, 643/2013 and 518/2013 for declaration and injunction which were dismissed on 18-11-2015, 16-09-2016 and 22-02-2016 respectively. Defendant No.1 Balasaheb and defendant 8 Rajendra and defendant No.9 Daivashala also had filed civil suit No.516/2013, 515/2013 and 512/2013 which were dismissed on 29-01-2015, 8-09-2016 and 29-01-2015 respectively. Defendants are trying to grab the property of plaintiff on the basis of false story. Therefore, these suits were dismissed. Plaintiff is the owner of the suit property on the basis of registered partition deed and is in possession of the suit property since partition. Plaintiff is not residing in village therefore, defendant by taking the advantage of the same in collusion with each other trying to encroach upon the land of plaintiff by building their houses over the suit property. Hence, plaintiff prayed to restrain the defendants from obstructing his peaceful possession over the suit property.

7] In rebuttal, the defendant No.1 to 3 categorically denied the allegations and contended that plaintiff was the owner and

possessor 95 R land of survey No.94. But he plotted the said land in the year 2009 and 2010, prepared a map and layout and thereafter sold the plots to the purchasers. It is the contention of defendants that Plot No.7 out of the suit property was purchased by defendant No.1 from plaintiff for consideration of Rs.20,210/- on bond paper of Rs.100/- on 17-02-2010. plaintiff received the money and given he receipt of the same. Plaintiff and his wife had signed on the bond paper as well as on receipt. As such, defendant become the owner of the said plot and he is in possession of the same. Thereafter, defendant No.1 mutated his name in the records of right in the year 2010 and therefrom paying the tax to the Gram Panchayat, Killari. They further contended that, on the same day, defendant No.2 and 3 jointly purchased the half of the plot from the western side admeasuring north-south 50 feet and east west 15 feet for consideration of Rs.20,000/- on bond paper of Rs.100/-. Defendant No.2 has also taken the water connection and electric connection. Defendant No.3 also has taken the bore-well. Therefore, since from the purchase defendant No.1 to 3 are the owner and possessor of their respective plots.

8] It is further contention of defendant No.1 to 3 that plaintiff had sold in all 14 plots to different purchasers and the plot owners after building houses residing their with their families. Now plaintiff is trying to dispossess the defendants on the basis of bogus agreement. Plaintiff also tried to delete the name of the defendants from the revenue records. Defendants have also filed complaints time to time against the plaintiff. Names of defendants also have been entered in the revenue record. They are paying taxes to the Gram-

panchayat since 2010 . They have also paying the N.A. Tax and there is entry to the that effect in the N.A. tax register. Plaintiff has not come to the Court with clean hands. He is not in possession of the suit plots. He has already transferred the suit plots to the different purchasers. Therefore, the suit of the plaintiff is not tenable. Hence, prayed to reject the application.

9] Defendant No.5 to 9 resisted the application and contended that defendant no. 4 to 9 and Rekha Rudrawade had purchased the plot No. 4, 3, 6, 9 & 10, 8, 11 & Plot No. 21 respectively out of Sr. No. 94 from plaintiff on 17/02/2010, 15/06/2010, 17/03/2010, 21/04/2010, 26/02/2010 and 21/03/2010 respectively. It is further contention of defendants that on the basis of purchase deed the possession of the plots were handed over to the present defendants and there names are recorded in Gram-panchayat village Killari. They had paid to consideration amount to the plaintiff and he had issued receipt of the same. Defendants are paying taxes of the said plots to the local government and they are in possession of their respective plots. Defendant no.5 and 7 had also obtained permission for construction, built a house, taken the electricity connection and residing there. Defendant no. 5 and 7. All the defendant are in possession of their respective plots therefore they prayed to reject the application.

10] In order to show the title and possession over the suit property plaintiff relied on the partition deed dated 19.12.2000. On perusal of the same, it transpires that father of plaintiff, Gundu Khajure had partitioned the joint family property and 1H 68R land out of survey No. 94 was allotted to the share of Plaintiff. The 7/12

extract of Gat no. 94 shows that plaintiff is owner and possessor of 95R land out of Gat no.94

11] It is seen from the sale-deed and receipt Dated 17.02.2010 filed on record that Defendant No.1 has purchased South North 50 and East West 30 fit plot from Plaintiff for consideration of Rs.20,210/- and Plaintiff has receive the amount of Rs.20,000/- from him by giving receipt of the same. The purchase bond and receipt theirs the signatures of Plaintiff and his wife & also of witnesses. No doubt the bond is of Rs. 100/- ,the document is not registered but Plaintiff has not denied his signatures on the said document. 8/A extract of Gram-panchayat record bears the name of defendant No.1 on the said plot. The tax receipts and general receipts, construction permission issued by the Gram-panchayat, Killari and the photographs filed on record and the no due certificate and the other document shows that defendant no.1 is in possession of plot no.7 admeasuring 50X20 feet and defendant no.2 and 3 are in possession of plot no.6 admeasuring 50X15 feet plot.

12] It is seen from the sale deeds filed by Defendant no.5 to 9 that defendant no. 5 has purchased plot no. 3 admeasuring 30X50 feet out of survey no.94 from plaintiff for amount of Rs.20,000/- on 15-06-2010. Father of Defendant no. 7 has purchased plot no.9 & 10 admeasuring 50X30 feet and 50X60 feet out of survey no.94 from plaintiff for amount of Rs.50,000/- on 21-04-2010. Defendant no.8 has purchased plot admeasuring 30X50 feet out of survey no.94 from plaintiff for amount of Rs.20,000/- on 26-06-2010. Defendant no.9 has purchased plot no.11 admeasuring 50X30 feet

out of survey no.94 from plaintiff for amount of Rs.20,010/- on 16-03-2010. From the aforesaid purchased deed , it transpires that plaintiff has plotted the land owned and possessed by him for his family needs and sold out the plots to defendants and received consideration amount from defendants. The other document i.e 8/A extracts of Gram-panchayat record,the tax receipts filed by defendant no.5 to 9 on record shows that defendant no. 5 to 9 are in possession in their respective plots.

13] It is to be noted that plaintiff sought interim relief to restrain the defendant from obstructing his peaceful possession over the suit plot. As per his contention defendants are making construction over the suit property. He did not seek to restrain the defendants from proceeding with construction work in suit plot. The layout map produced on record shows that plaintiff has plotted the land owned and possessed by him out of survey no. 94 and sold the same to various purchasers. All the defendants have produced document showing their possession over their respective plots. It seems that defendants are in possession of their respective plots since prior to filing of the suit. It is to be noted that before selling the aforesaid plots plaintiff must have measured the land own land possessed by him. Defendants have given the area of the plots owned and possessed by them. Therefore, it seems that plaintiff is not at all in possession of the suit plot. If at all any land is remaining with plaintiff, then he has to show the total area which was owned by him and the area sold by him but no such evidence adduced by plaintiff. He also concealed the fact of plotting of the land and sale the same to the various purchasers. At this stage, defendants have shown their possession over their respective plots. Hence there is no prima-facie

case in favour of plaintiff to infer that he is in possession of suit plot.

14] In view of above facts and circumstances, I am of the view that, prima-facie the plaintiff has failed to made out his case. Hence, there is no question of causing inconvenience and irreparable loss to the plaintiff. Accordingly, I answer point Nos.1 to 3 in the negative and proceed to pass the following order.

ORDER

[1] Application Exh.5 is rejected.

[2] Costs in cause.

Dated : 22/03/2018

(V. D. Bhosale)
Civil Judge J.D. AUSA.