

MHLA140017762022



ORDER PASSED BELOW EXH.39

The present application is filed by defendant no.5 (Plaintiff in counter claim Exh.46) under Order XXXIX Rule 1 and 2 of Code of Civil Procedure seeking temporary injunction against plaintiff (defendant no.1 in counter claim) to restrain her from obstructing the possession of the plaintiff over the counter claim property till final disposal of the suit.

2. The case of the defendant no.5 (Plaintiff in counter claim) in the brief is as under:-

Defendant no.5 contended that he is the owner and possessor of land 1 H 21 Are out of survey no. 69 situated at Wangji Tq.Ausa Dist. Latur (More specifically described in paragraph no. 1 of the application) (for the sake of brevity and convenience herein referred as the “counter claim property”).

3. It is further contended that, the counter claim property is absolute property of defendant no.5 which he has purchased 1 H. from Sudhir Dilip Patil and 21 Are from defendant no.1 on the basis of registered sale deed bearing no. 1515/2006 dated 05/05/2006. Defendant no. 2 sold out 1H. land out of survey no. 69 to one Shri. Sudhir Dilip Patil vide registered sale deed bearing no. 1106/2003 dated 25/04/2003. Defendant no.5 is in possession of the counter claim property from the date of sale deed. Mutation entry of the counter claim property is certified in the name of defendant no.5 by

mutation entry no. 788 after the sale-deed. Defendant no. 1 (original plaintiff) has no right, title and interest in the counter claim property, but she is obstructing to the possession of defendant no.5 over the counter claim property. Defendant no.5 time and again requested plaintiff (defendant no.1 in counter claim) for not to obstruct the possession of the defendant no.5. However, the plaintiff (defendant no.1 in counter claim) did not pay heed to it. Therefore, the defendant no.5 has filed present counter claim for perpetual injunction. By way of present application the defendant no. 5 seeks to restrain the plaintiff (defendant no.1 in counter claim) for not to obstruct his possession over the counter claim property till final disposal of the suit.

4. Defendant no. 1 (original plaintiff) filed her written statement vide Exh. 43.

5. Read the application, affidavit in support of the application and documents on record. Heard learned advocate Shri. G.H. Kusumkar for the defendant no.5 (plaintiff in counter claim) and learned advocate Shri. S.C. Birajdar for plaintiff (defendant no. 1 in counter claim).

6. From the consideration of facts and pleading, following points arise for my determination and I have recorded my findings against each of them for reasons enumerated below:-

POINTS

REASONS

1. Whether the defendant no.5 has made out prima-facie case ?
2. Whether the balance of convenience is in favour of the defendant no.5 ?

Yes.

Yes.

3. Whether the defendant no.5 will suffer irreparable loss in the event of refusal of temporary injunction ? **Yes.**
4. What order? **Application is allowed.**

REASONS

AS TO POINTS NO. 1 TO 3 :-

7. All points are interlinked. Hence, in order to avoid repetition of the points they are discussed together.

8. In order to succeed, the defendant no.5 has to prove the three essential ingredients that is prima-facie case in her favour, balance of convenience lies in her favour, irreparable loss likely to be caused, if injunction is not granted in his favour.

9. The defendant no.5 has relied on the 7/12 extract, mutation entry no. 788 and copy of sale-deed of the counter claim property.

10. The contention of defendant no.5 is that the counter claim property is purchased by him from defendant no.1 (defendant no.2 in counter claim) and Shri. Sudhir Dilip Patil. Defendant no.1(defendant no.2 in counter claim) sold counter claim property in Sudhir Patil and later on defendant no.5 for his legal necessity. Therefore, defendant no.5 is a bonafide purchaser of the counter claim property. Hence, plaintiff (defendant no.1 in counter claim) has no right, title and interest over the counter claim property.

11. The plaintiff (defendant no.1 in counter claim) contended that the counter claim property is ancestral and joint

family property of plaintiff and defendant no. 1 to 4 (defendant nos. 1 to 4 and 6 in counter claim). Defendant no.1(defendant no.2 in counter claim) sold the counter claim property in order to avoid and deny the right on plaintiff. The sale deed of the counter claim property in favour of defendant no.5 is nominal and without possession. Therefore, the sale deed of the counter claim property is not binding upon her.

12. Defendant no.5 has relied upon the registered sale-deed, 7/12 extract and mutation entry of the counter claim property to show his possession. According to Section 157 of Maharashtra Land Revenue Code, 1966 there is presumption of correctness of entries in record of rights and register of mutations. Therefore, the revenue record shows that the defendant no.5 is in possession of the counter claim property. Prima-facie it is not seen that plaintiff (defendant no.1 in counter claim) has not issued any legal notice to defendant no.5 for cancellation of the sale-deed. Therefore, prima-facie it is not seen that the sale deed of the counter claim property was nominal and without possession. Further, prima-facie it is seen that there is no prayer by plaintiff for cancellation of sale deed of the counter claim property.

13. The issue of whether defendant no.5 is bonafide purchaser or not and whether defendant no.1 (defendant no.2 in counter claim) sold the counter claim property for legal necessity or not are the triable issues which requires the full fledged trial. Admittedly, the plaintiff is not in physical possession of the counter claim property. In such circumstances, prima facie registered sale deed, 7/12 extract and mutation entry of the counter claim property

shows the possession of defendant no.5.

14. It is worthwhile to note that the plaintiff has denied the ownership and possession of defendant no.5 in the counter claim property. The same would prima-facie amount to obstruction to defendant no.5's possession.

15. Defendant no.5 has prima-facie proved his possession to counter claim property and obstruction by plaintiff to his possession. Thus, defendant no.5 has raised bonafide dispute requiring trial. As such, defendant no.5 has proved prima-facie case in his favour.

16. The balance of convenience between parties as to be weighed, considering documents on record and submissions made by the parties. There would be multiplicity of proceeding if the temporary injunction to restrain the plaintiff (defendant no.1 in counter claim) from obstructing of possession of the counter claim property is not granted. In such circumstances, the balance of convenience tilts in favour of defendant no.5. Defendant no.5 has shown that he will suffer irreparable loss which can not be compensated in terms of money, if injunction as prayed is not granted in his favour till final disposal of the suit. Hence, I answer points No.1 to 3 in affirmative. Therefore, in answer to point No. 4 following order is passed :-

ORDER

1. Application Exh.39 is allowed.
2. The plaintiff (defendant no. 1 in counter claim) or any other person on behalf of her, is temporarily restrained by issuing temporary injunction from obstructing the

possession of defendant no.5 (plaintiff in counter claim)
over the counter claim property (more specifically
described in paragraph no. 2 of the application) till the
final disposal of the suit.

3. Cost in main cause.

(*Dictated & pronounced in open Court*)

Ausa
Date:- 18/04/2023

(P.D.Kolekar)
2nd Jt. Civil Judge J.D.,Ausa.