

CNR NO-MHLA150002382020

**ORDER BELOW EXH.5.**

The present application is moved by plaintiff under Order XXXIX Rule 1 & 2 of C.P.C for restraining defendants from interfering and obstruction in peaceful possession of plaintiff over suit land which is described in para no.2 of application (herein after shortly referred as ' Suit Land').

2. Defendant no. 2 to 3 and 5 to 7 have filed written statement along with counter claim vide Exh.33 and they have opposed temporary injunction application on various ground. Defendant no.1 died on 03.06.2020. Defendant no.4 failed to appear in this matter after service of summons. So, order is passed below Exh.1 against her.

3. Points for determination along-with my findings and reasoning thereon as under.

Sr. No.	Point	Finding
1.	Whether plaintiff proves prima facie case?	In the affirmative.
2.	Whether balance of convenience lies in favour of plaintiff ?	In the affirmative.
3.	Whether irreparable loss will be	In the affirmative.

	caused to plaintiff if temporary injunction is not granted ?	
4.	What order ?	Application is allowed.

Reasons

Points no. 1 to 3 :-

4. To avoid repetition of facts & discussion, point No.1 to 3 are taken together for sake of convenience.

5. Learned Advocate for the plaintiff submitted that deceased defendant no. 1 Vishwanath was having two wives. Plaintiff is legally wedded wife and Shakuntala is second wife of deceased Vishwanath . Shakuntala died in the year 2019. Defendant no. 2 to 7 are legal heirs of deceased Shakuntala. Plaintiff and Shakuntala filed RCS No. 279/1981 before C.J.J.D. Ahmdepur against defendant no.1 Vishwanath. Matter was compromised between plaintiff Shakuntala and defendant no.1. Plaintiff became owner and possessor of suit land gat no.142/2 adm. 2 H. 25 R and land gat no. 161/1 adm. 95 R situated at Wadwal Na. Tq. Chakur Dist. Latur as described in para no. 2 of temporary injunction application. As per said compromise permanent ownership given to plaintiff of suit land, but defendant no.1 with malafide intention mentioned illegal clause and suit land was given to share of plaintiff only for the purpose of cultivation. Name of

plaintiff was mutated in respect of suit land. Conditions which were mentioned in compromise is illegal and not binding on plaintiff.

6. Plaintiff is owner and possessor of suit land. Plaintiff is old and issue-less lady. Defendant no. 1 to 5 on the basis of illegal and void condition in compromise RCS No. 281/1981, they are trying to interference and obstruction over suit property. So, plaintiff has prayed for temporary injunction against defendants as mentioned in prayer clause.

7. Defendant no. 2 ,3 5 to 7 filed their written statement vide exh.33 and submitted that, compromise decree in RCS No. 281/1981 dated 28.09.1981 is not binding upon them. They were not party to alleged compromise decree. They denied that, plaintiff is legally wedded wife of deceased Vishwanath. According to them plaintiff is second wife of deceased Vishwanath and she cannot claim ownership of joint family property of defendants. Boundaries of suit land shown in para no. A and B are also false and incorrect. Plaintiff is not owner and possessor of suit land on the basis of compromise decree in RCS No. 281/1981. Defendants no. 2 to 7 are in possession over suit land. So, defendants prayed for rejection of temporary injunction application.

8. The provision of temporary injunction provided in order 39 Rule 1 and 2 C.P.C. as a discretionary relief. While exercising this discretion court has to see that requirements

are made out by plaintiffs.

(a) Existence of prima facie case as pleaded, necessitating protection of the plaintiffs right by issuing order of temporary injunction;

(b) When the need for protection of the plaintiffs are compared with the or weighed against the need for the protection defendants rights, the balance of convenience lies in favour of the plaintiffs.

(c) Clear possibility of irreparable injury being caused to plaintiffs if the temporary injunction is not granted.

9. Heard both side. Perused record & documents. It is case of plaintiff that she is owner and possessor of suit land as described in para no.2 of the application on the basis of compromise decree in RCS No. 279/1981 dated 28.09.1981 and defendants are obstructed in peaceful possession of plaintiff over suit land. Perused 7/12 extract of field gat no.142/2 vide exh. 10, gat no.161/1 vide exh.11 & holding certificate vide exh.12 and compromise decree in RCS No. 279/1981 Bhagirathi Vs.. Vishwanath. Prima facie, it shows that, plaintiff is became owner & possessor of suit land on the basis of compromise decree in RCS No. 279/1981. Compromise decree also shows that defendant no.1 delivered possession of suit land to plaintiff. Furthermore, said compromise decree was acted upon and name of plaintiff is

mutated in 7/12 extract of suit land. It shows long standing name of plaintiff in revenue record in respect of suit land. At this stage , nothing is brought on record by defendants to show that they have filed challenged said entries before concerned authority .

10. Plaintiff has filed copy of complaint in police station Chakur against defendants about illegal act of defendants & obstruction in peaceful possession of plaintiff over suit land by defendants. Plaintiff has filed copy of complaint as per list of document vide exh. 38. Prima facie, it shows that defendants obstructed in peaceful possession of plaintiff over suit land.

11. It is case of defendants that, said compromise decree R.C.S No. 279/1981 is false and fabricated document and plaintiff committed fraud and obtained decree. However, said case of defendant can not be accepted at this stage. Reason for non acceptance is that defendants have not given any details of fraud at the time of passing said compromise decree in RCS No. 279/1981.

12. It is submitted on behalf of defendants that said compromise decree is unlawful & they are not party to said matter. At this stage it is necessary to mention here that, whether said compromise decree is lawful or not can not be decided at this stage. It is triable issue & it requires evidence.

13. It is also submitted on behalf of defendants that plaintiff is not legally wedded wife of defendant no. 1 & she is

second wife of defendant no.1. Deceased Shakunatala was legally wedded wife of deceased defendant no.1. However, said submission on behalf of defendants can not be accepted at this stage. Reason for non acceptance is that plaintiff has filed affidavit of Rajaram s/o. Shesherao Rupnar vide exh.42 on record to show that plaintiff is legally wedded wife of deceased defendant no.1. Per contra, defendants have not filed counter affidavit of any family member to show that, plaintiff is second wife of deceased defendant no.1.

14. After considering above all things and discussion prima facie it appears that plaintiff is became owner and possessor of suit land on the basis of compramise decree passed in RCS No. 279/1981. The Plaintiff is owner & possessor of suit land. She is having right to enjoy said property without any obstruction . Defendants have not filed any documents on record to show that they are exclusive possessor over suit land. Defendants are obstructed in peaceful possession of plaintiff over suit land. They are denying the ownership of plaintiff. So plaintiff has proved prima facie case. Hence, I answer point no.1 in the affirmative.

15. I answered point no.1 in affirmative. If temporary injunction is not granted in favour of plaintiff, then it will cause harm on the right of plaintiff over suit land. If injunction is granted in favour of plaintiff and against

defendants then it will not cause any harm to defendants. So, balance of convenience is in favour of plaintiff. So, I answer point no.2 in affirmative

16. If defendants are not restrained from obstruction in peaceful possession of plaintiff over suit land then it will cause injury to plaintiff. Said injury cannot be compensated in terms of money. So, I answer point no.3 in the affirmative and in answer to point no.4 I proceed to pass following order.

ORDER

1. Application [Exh.5] is allowed.
2. Defendants no. 2 to 7, their agents, servants anybody claiming through them are hereby restrained from causing any obstruction and interference in peaceful possession of the plaintiff over suit land as described in para no.2 of the application till final decision of suit.

Date : 21.07.2023.

(Prashant P. Kale)
Civil Judge J. D., Chakur