

Order below Exh.No.5.

(Passed on 26-10-2018).

1. This is an application filed by plaintiff under Order 39 Rule 1 and 2 Code of Civil Procedure for grant of temporary injunction for restraining defendants from interfering and obstructing over the the land block no. 107 (Sy.No.72) adm. 82R situated at village Gharola TQ. Chakur (i.e. suit land) till the final disposal of the suit.

2 . The plaintiff is the owner and in possession over the suit land. The plaintiff had purchased the suit land from Waliba under registered sale deed No.484/87 on 19.02.1987, accordingly in revenue record mutation No.1157 is sanctioned. The said Waliba had partitioned his remaining land among his sons on 20.11.1987. The son of Waliba namely Uttam had allotted 02H.34R, Kalyan had allotted 02.H. 34R and Annarao had allotted 02.H.38R. The plaintiff had previously purchased 2H.42R land from the said Waliba under registered sale deed No.1152/80 on 02.04.1980, accordingly mutation entry No.22 had sanctioned.

3. One Narhari Rama Suryawanshi purchased 85R land from Bapuna Manadu Shinde on 27.02.1975 under registered sale deed No.917/1975. Thereafter the said Narhari had sold the said land to defendant no.2 on 25.04.1995 under registered saled deed No.1340, further in the said sale deed he has shown 86R land. As a matter of fact the owner of block no.107 was Waliba Rama Shinde and not the Bapuna Mahadu, but in the sale deed of dated 25.04.95 the block

no.107 is wrongly mentioned. The defendant no.2 is in possession over eastern side of block no.110 and he is not concerned with the suit land.

4. Defendants have by taking undue advantage of revenue record illegally trying to interfere over the suit land. Thus the plaintiff has prayed that he is having prima facie case and if defendants are not restrained then he will suffer irreparable loss which can not be compensated in terms of money.

5. The defendant no.1 has filed his written statement at exh.78 and he has denied that the plaintiff is owner and he is in possession over the suit land. It is denied that Waliba Shinde had partitioned his remaining land 7 Acre 06R between his sons, according to him Waliba had partitioned 7H. 94R land among his three sons. In partition Uttam had received 2H.34R, Kalyan had received 2H.38R and Annarao had received 2H.38R land in block no.107, accordingly mutation entry no.167/87 was sanctioned. Further he has not disputed that the name of defendant no.2 is wrongly mutated in block no.107 to the extent of 86R, he has having the land in block no.110.

6. The revenue authority has cancelled the mutation entry no.1157/13. The plaintiff is owner and in possession over the land block no.107 to the extent of 2H.42R within the four boundaries mentioned in the sale deed no.152/80, thus the plaintiff is not the owner to the extent of 3H.24R nor to the extent of 82R land in block no.107. Therefore the question of interference does not arise, the plaintiff is not having primafacie case. Thus the defendant submitted to reject the application.

7. The defendant no.2 has filed his written statement at exh.43 and he has denied that the plaintiff has purchased the suit land and he is owner and he is in possession over the suit land. Further he has denied that Waliba Shinde had partitioned 7 acre 06R among his sons. Further he has submitted the plaintiff is in possession over the land to the extent of 2H.42R. Thus he submitted to reject the application.

8. After considering the rival contentions of the parties, following points arise for determination along with my findings thereon for the reasons noted below.

<u>Point</u>	<u>Findings.</u>
(1) Whether plaintiff has made out prima -facie case in his favour ?	Yes
(2) Whether the balance of convenience lies in his favour ?	Yes
(3) Whether Plaintiff will suffer irreparable loss if remedy of temporary injunction is not granted?	Yes
(4) What order ?	The application is allowed.

REASONS.

As to Point no. 1 to 3:-

9. Heard learned advocate for the plaintiff and defendants. In support of the application the plaintiff has relied on the documents filed with list at exh. 4, 36 and affidavits of witnesses filed with list at exh.46 and 88. On the contrary defendants has relied on the documents filed with list at exh.52.

10. I have perused the documents filed on record by the both parties. According to the the plaintiff he has purchased the suit land from Waliba Alure under registered sale deed No.484/87 on 19.02.1987 and accordingly in revenue record mutation No.1157 is sanctioned. Defendants have denied the said fact. In supports of her case plaintiff has filed certified copy of mutation no. 1157, certified copy of abstract of 8-A of block no. 107, certified copy of 7/12 abstract of block no.107, certified copy of sale deed no.484/1987.

11. It appears from the copy of sale deed no.484/1987 that Waliba Motiram Alure the had executed the sale deed in favour of the plaintiff to the extent of two acre two gunta out of Sy.no.72 on 19.02.1987, further it appears that the name of plaintiff is mutated in revenue record wide mutation no. 1157. It further appears from the copy of 8-A and 7/12 extract of the block no.107 of the that the plaintiff shown as owner and in possession over the land adm.3H.24R. The above revenue record shows that plaintiff is in possession over the suit land and the said documents is having presumptive value under the Maharashtra Land Revenue Code unless the contrary proved. The defendants have not disputed that the plaintiff has mutated the suit land in his name, but according to them the said mutation is cancelled.

12. It is pertinent to note here that the plaintiff has filed the appeal before Additional collector at Latur and he has allowed the appeal and set aside the order of sub divisional officer Ahmadpur dated 26.12.2014, further he has filed certified copy the said order of the Additional collector, Latur dated 11.12.2015 on record. The defendant no.1 contended that he has filed appeal against the said order before Additional Divisional commissioner at Aurangabad and the same is pending, further he has filed the certified copy of the same on record. It is contention of defendants that the plaintiff has not purchased the suit land and he is not the owner of the suit land. In my view the plaintiff has filed the certified copy of the sale deed no.1187/87 on record which prima facie shows that he had purchased the suit land, further the said sale deed is not challenged by the defendant no.1, further genuineness the said sale deed and the said fact can not be considered at this stage, it would be decide after evidence of both parties.

13. The learned advocate for the defendants has submitted that the mutation is not sanctioned immediately after the sale deed and it was sanctioned on 22.02.2013, thus the said sale deed not acted upon. The learned advocate for the plaintiff has submitted that, it is duty of registering officer to give intimation to concerned Talathi to take entry in record of right. The learned advocate for plaintiff has placed reliance on decision of **2008 (2) MhLj 819 BOMBAY HIGH COURT Shamrao Ganpat Chintamani Vs. Kakasaheb Laxman Gorde**. With due respect I have gone through it, in which Hon'ble High Court observe that In

view the section 154 of the Land Revenue Code, it is in fact the duty of the sub-register/Registering officer to inform the transaction in question to the Talathi as well as to the Tahasildar. Thus it is not an obligation on the part of plaintiff, on the case on hand, to report the transaction to the village officer or to the Revenue officer. Section 149 has to read with section 154 and conjoint reading show that in case of acquisition otherwise than registered instrument, party has to make a written application to the village officer. Suffice to say that in case of registered instrument, it is legal obligation on the registering authority. If the registering authority commits an error or fails in its duties, citizen like the plaintiff can not be blamed or made to suffer. Thus the case in hand though there is delay in carrying the mutation it can not say that the sale deed is not acted upon, hence I do not agree with the submission of the learned advocate for the defendants that the sale deed is not acted upon.

14. The plaintiff has contended that the defendants are interfering in his possession, moreover the defendant has denied the ownership and possession of the plaintiff over the suit land which also supports his contention, further the plaintiff has filed the affidavits of witnesses which also supports his contention. Thus it appears that there is interference and obstruction at the hands of the defendants over the suit land.

15. Thus in my view the revenue record filed by the plaintiff shows that the plaintiff is in possession over the suit land, therefore the contention of defendant that the plaintiff is not in

possession over the suit land is not acceptable. The case in hand the plaintiff has prima facie established his case, the balance of convenience lies in his favor and there is loss to the plaintiff, if the temporary injunction not granted. Thus the application deserves to be allowed. Accordingly, I answer point no. 1 to 3 in affirmative and in the result of point no.4, I pass following order.

ORDER

1. Application is allowed.
2. Defendant, his agents, servants or any other person on behalf of them hereby restrained from interfering or obstructing in the possession of the plaintiff over the suit land i.e. block No.107 adm. 82R situated at Gharola Tq. Chakur till the final disposal of the suit.

(Gajanan B. Jankar)
Joint Civil Judge, J.D. Chakur

Date : 26-10-2018.

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file judgment are same, word to word, as per original judgment.

Name of the Stenographer	:-	M. B. Pathan
Name of the Court	:-	Jt. Civil Judge, J.D., Chakur.
Date of Judgment	:-	26.10.2018
Judgment signed by Presiding Officer on	:-	26.10.2018
Judgment uploaded on	:-	26.10.2018