

MHND160012502024



RCS No. 425/2024  
Namdev Satwaji Bhise & Others Vs.  
Devrao Satwaji Bhise and Other

**ORDER BELOW EXH. 05**

This is an application under Order 39 Rule 1 and 2 of Code of Civil Procedure.

2) The suit is for declaration that plaintiff No.1 is the owner and possessor of land survey No.99/1 of Village Chabhra and land Gat No. 120 of village Jagapur Tq. Hadgaon Dist Nanded and for restraining the defendants from causing any obstruction to the plaintiffs possession over the suit property.

3) **Description of the properties :-**

A) Landed property bearing survey No.99/1 area admeasuring of about 89 R. assessment Rs. 1.62 paisa of village ChabhraTq. Ardhapur Dist Nanded, four boundaries of which are not mentioned in the plaint.

B) Landed property situated at village Jagapur Tq. Hadgaon Dist Nanded bearing Gat No. 120 area admeasuring of about 2H.40R. assessment of Rs. 5.40 paisa bounded as follows;

- Towards East :- Land of Kailash Sonale.
- Towards West :- Stream and thereafter land of Balaji Naik.
- Towards North :- Land of Ramesh Mhaske and Baburao Mhaske.
- Towards South :- Land of Jijabai Ramji Khokle and Parashram Khokle.

The above agricultural land is the subject matter of the suit (**here-in-after referred as "Suit Property"**).

4) **The plaintiff's case is summarized as under :-**

The plaintiff has filed this suit for declaration of ownership and possession of the suit property. It is the case of plaintiff that, plaintiff No.1 is husband of the plaintiff No.2. The defendant No. 1 is his real brother and defendant No.2 to 4 are the sons of the defendant No.1. The plaintiff is employed in the year 2003 in ST Department. In the year 2008 he resigned from the post of conductor and get another service in labour department at labour Commissioner office at Nanded. Since 2003 by depositing the amount from his salary he has purchase the land bearing Gat No. 120 of village Jagapur from its erstwhile owner Balaji Tukaram Murmure vide registered sale deed dtd. 23/04/2018 bearing No. 1452 and another registered sale deed on the same day bearing No. 1453. Accordingly name of the plaintiff No.1 is mutated to the revenue record vide mutation entry No. 1361 and 1362 dtd. 16/09/2018.

5) It is further stated that, the land bearing survey No. 99/1 area admeasuring of about 89 R. of village Chabhara Tq. Ardhapur Dist Nanded was already purchased by plaintiff No.1 from the balance amount of his salary prior to purchasing the agricultural land bearing gat No. 120 of village Malzara. In the year 2021 the plaintiff No.1 with view to get benefits of government scheme has mutated the land admeasuring of about 1H. 18 R. out of land 2H.40 R. in Gat No.120 in the name of his wife i.e. plaintiff No.2 vide mutation entry No. 1524 dtd 06/01/2021. Since then the plaintiffs are in possession and cultivating the suit properties.

6) It is further stated that, the defendant No.1 Deorao Bhise has not given any amount for purchasing the suit property from the income of joint family property. The entire consideration is paid to the sellers by plaintiff No.1 from his salary and therefore the suit property is self acquired property of the plaintiff No.1. Since 2018 the plaintiffs by engaging labours are cultivating the suit land peacefully and taking the income year to year. For this year also he has sown the Soybean which is standing in the field. The defendant No. 2 to 4 being the sons of defendant No. 1 and having man and muscle power, trying do the possession forcefully on the suit property and if they succeed their will irreparable loss to the plaintiffs and will also cause in justice on their part. Therefore, to protect the possession of plaintiff, the plaintiff constrained to filed the present suit and application.

**The defendants case is summarized as under;**

7) The defendants have filed written statement vide Exh.15 and by filing pursis at Exh. 17 stating therein that, the written statement be considered as say to the application at Exh.5. Defendant has admitted the relationship between the parties. Further defendants have admitted that, survey No.88/04, 88/03 and 95/03 are their ancestral properties. Further they admitted that, the property bearing survey No. 88/04 was in the name of their mother Saraswatibai and survey No. 88/03, 95/03 of village Chabhara is in the name their father namely Satwaji Bhise. Further they admitted that, plaintiff No.1 was employed in the Maharashtra State Transport Corporation in the year 2003 and in the year 2008, he is employed in Labour Commissioner at Commissioner office at Nanded. However, defendants denied that, their father and his brothers are jointly residing. Further the defendant denied that, property bearing survey No. 95/07 of village Chabhara and survey No. 95/04 which were purchased in the name of Devrao i.e. defendant No.1 were jointly purchased is the joint family property of these three brothers.

8) The defendants came with the case that the some properties of survey No.88/04, 88/03 and survey No. 95/03 is given to the elder brother namely Baburao in the year 1995 by their father and thereafter the plaintiff No.1 and defendant No.1 residing separately from their elder brother. However plaintiff No.1 and defendant No.1 are residing jointly. At that

time the plaintiff No.1 get employed in the ST Corporation and defendant No.1 use to cultivate the land. During the jointness of their family the plaintiff No.1 and defendant No.1 have purchased the property bearing survey No. 95/07 area 0H. 81.R, survey No. 95/04 area 0H. 70 R in the name of defendant No.1. Thereafter, plaintiff No.1 and defendant No.1 have purchased the property bearing survey No. 99/01 admeasuring of about 89R. in the name of plaintiff No.1. Thereafter, they have jointly purchased the property bearing Gat No. 171 admeasuring of about 0H.40R. in the name of defendant No.1. Thereafter plaintiff No.1 and defendant No.1 have purchased the present suit property of village Jagapur in the name of plaintiff No.1. The plaintiff No.1 was in government service and therefore defendant no.1 use to cultivate all the above said properties which were jointly purchased by defendant No.1 and plaintiff No.1 as they are residing in joint family. There was transaction between plaintiff No.1 and defendant No.1 and his son defendant No.3 till last January 2024. However, now due to hick in the prices of landed property and the suit property being more cultivable and good property, with view to obtain the suit land plaintiff No.1 has brought the false suit by taking undue advantage of the fact that the sale deed is executed in his name. Hence submitted to reject the application.

**Argument by Ld.Advocte for plaintiff Shri U.G.Tikore:**

9) The Ld. Advocate for plaintiff Shri U.G.Tikore

submitted that, the plaintiff is in service since 2003. The plaintiff has purchased the suit property from his self income from service. The agreement to sale and sale deed are in the name of plaintiff No.1. Since then the plaintiff is cultivating the suit property the plaintiffs name are also entered to revenue record. There are ancestral property of plaintiff and defendants family which are in the name of defendant No.1 and their deceased father and mother. Despite that, the defendant No.1 to 4 are obstructing the peaceful possession of the plaintiffs over the suit property. He further submitted that, all the ancestral properties are given to the another brother namely Bapurao of the plaintiff No. 1 and defendant No.1. There is no partition between the plaintiffs and defendants in respect of other ancestral property. However, this is not the question decided in this suit. According to him, the present suit is only in respect of suit properties which are purchased by the plaintiff No.1 for which defendant has not contributed any amount as contended in their written statement. There is no document to show that payment was made by the defendant. The affidavits produced by defendant to prove the possession of the defendant No.1 of the persons who are resident of that village and the persons who have witnesses on the agreement to sale are mere counter blast for the suit. But the plaintiffs is relying upon the sale deed and affidavits of vendor of the plaintiff.

10) He further submitted that, whether the defendant

has given the amount or not would be the part of evidence now only possession is to be protected. According to him, the bank transaction shown by the defendant are self withdrawal by defendant No.1. Only one entry of bank transaction of amount Rs. 1,90,000/- is shown in the name of plaintiff No.1 that two dated 07/06/2019 i.e. after the execution of sale deed dtd. 23/04/2018 i.e. after one year. Therefore he submitted that, the affidavit produced relied by the defendants and bank transaction shown by them are not sufficient to prove the fact that defendant No.1 to 4 are in possession of the suit property and they have contributed amount towards purchase of suit the property. Thereafter lastly he submitted that the plaintiff is the owner as per sale deed and 7/12 extract he is in possession and cultivating the suit property. Therefore, he has prima facie case in his favour and balance of convenience is also tilting in his favour and more irreparable loss would cause to him if defendants are not restrained from causing obstruction to his possession. Hence submitted to allow his application.

**Argument by Ld. Advocate Shri D.R.Pawar for defendant;**

11) Ld. Advocate for the defendant No.1 to 5 has vehemently submitted that, after separation of elder brother from their family the plaintiff No. 1 and defendant No.1 are jointly resided and jointly purchased the suit land as well as other lands in the name of each other. According to him, he come with clean hand and submitted that, the properties

bearing Gat No. 95/07 and 95/04 of village Chabhra are purchased by him and plaintiff No.1 by contributing equal contribution of which sale-deed is executed in his name. He further submitted that, the defendant no. 1 has specifically admitted that the property at village Malegaon bearing Gat No. 171 is also purchased in his name by plaintiff No.1 and defendant No.1. According to him, as like the properties jointly purchased at village chabhara and Malegaon, they again purchased the present suit property at village Jagapur. But it was purchased in the name of plaintiff No.1 and for which he has contributed the amount of Rs. 9,70,000/- from time to time for which he as produced the bank statement.

12) He further submitted that, as per the agreement to sale dtd. 17/03/2017 the purchase amount was fixed as Rs. 9,60,000/- for 1H.20R land and accordingly they have executed the agreement to sale in the name of plaintiff No.1 from the erstwhile owner of the suit properties. However, the plaintiff has shown the less amount of Rs. 4,55,000/- in the sale deed. According to him if the amount in the agreement to sale is considered then there it goes to 19,20,000/-. However, the plaintiff has not given the explanation how the said amount is brought by him from only 15 years of service. He has not produced any document of his salary. He further submitted that, the property situated at village Chabhra was purchases in the year 2007. Therefore, according to him it would not be possible for the plaintiff to purchase the

properties at village Chabhra and suit land out of the amount received from his salary.

13) He further submitted that, he has filed affidavits of the adjacent land owner of the suit property and the attesting panch witnesses on the agreement to sale dtd. 17/03/2017. They all are deposing on oath that the plaintiff No.1 and defendant No.1 have jointly executed the agreement and defendant also contributed amount of Rs. 9,60,000/-. Therefore, he submitted that, the defendant is in possession of the suit properties and cultivating the same since 2017 as plaintiff No.1 is in government service. He further submitted that, defendant No.1 to 4 are cultivating the suit properties along with other jointly purchased properties by them with the plaintiff and therefore if the injunction is granted then the plaintiff would dispossess the defendants from the suit properties. There is no prima facie case made out by the plaintiffs rather the defendant would suffer more irreparable loss than that of plaintiff if injunction is granted. Hence, submitted to reject the application.

14) I have considered following points for determination and recorded my findings thereon with reasons mentioned as follows.

Sr. No.	Points	Findings
1.	Whether plaintiff has established prima facie case in his favour ?	Partly Yes,

2. Whether balance of convenience lies in the plaintiff's favour ? **Partly Yes,**
3. Whether the plaintiff will suffer irreparable loss, if temporary injunction is not granted ? **Partly Yes,**
4. What order ? **As per final order.**

15. **The plaintiff filed following documents on record.**

Sr. No.	Description of documents	Dates	List of Exhibit
1)	Xerox Copy of 7/12 extract bearing Gat No. 120 area 2.40 R Lr's 5.40 paisa situated at Jagapur Tq. Hadgaon Dist Nanded.	14/02/21	7/1
2)	Xerox copy of mutation entry No. 1524 Gat No. 120 situated at Jagapur Tq Hadgaon Dist Nanded.	06/01/21	7/2
3)	Certified copy of mutation entry No. 1361	27/06/24	7/3
4)	Certified Copy of mutation entry No. 1524	27/06/21	7/4
5)	Certified copy of mutation entry No. 1603	30/03/05	7/5
6)	Certified copy of sale deed No. 1453/2018	23/04/18	7/6
7)	Verified copy of Adhar Card namely Tejshila W/o Namdev Bhise.		7/7

16. The defendants filed following documents on record :-

Sr. No.	Description of documents	Dates	Exhibit
1.	Agreement to sale (2)	17/03/17	19/1
2.	Witness Shesherao Umaji Murmure	11/10/24	20
3.	Witness Bajirao Govind Khokle	11/10/24	21
4.	Witness Jijabai Ramji Khokle	11/10/24	22
5.	Witness Pandit Ramji Khokle	11/10/24	23
6.	Witness Ramchandra Maroti Bhise	11/10/24	24
7.	Witness Sahebrao Tukaram Miradkar	11/10/24	25
8.	Witness Kailash Sambhaji Sonale	11/10/24	26
9.	Witness Manohar Punlik Murmure	11/10/24	27
10.	Bank statement	01/01/10 to 01/01/24	
11.	Mobile bank transaction photo copies		19/3

### REASONS

#### AS TO POINT NO.1

17) After considering the arguments advance by both the Ld. advocates after perusal documents produced on record it appears that, the plaintiffs are relying upon the 7/12 extract produced at list Exh.7/1, Copy of mutation entry No. 1524 produced at list Exh.7/2, Photo copy to sale deed bearing No.

1453/2018 produced at list Exh.7/5. On perusal of 7/12 extract of suit property bearing 120 of village Jagapur it appears that name of the plaintiff No.1 and plaintiff No.2 are entered to revenue record of the suit properties by way of the mutation entry No.1524. On perusal of mutation entry bearing No. 1524 prima facie it appears that, the plaintiff No. 1 has made partition in receipt of the suit property bearing Gat No. 120 and out of land admeasuring 2H.36R. The land admeasuring of about 1H. 18R. is given to the plaintiff No.2 by way of partition. Further on perusal of mutation entry 1361 it appears that, the plaintiff No.1 has purchased the land bearing gat No. 120 area admeasuring about 1H.20R from Balaji Tukaram Murmure.

18) Further perusal of sale deed dtd. 23/04/2018 it appears that plaintiff No.1 has purchased the land admeasuring of about 1H.20R. out of the gat No. 120 of village Jagapur for amount of Rs. 4,55,000/- from its erstwhile owner Madhav Tukaram Murmure. The possession of this property is also transferred to the plaintiff No.1 before execution of the sale deed.

19) On the other hand the defendant No.1 to 4 are relied upon the agreement to sale executed by the Balaji Murmure, Madhav Murmure in the name of plaintiff No.1. On perusal of those agreement to sale it appears that, those documents are executed on 17/03/2017. The document

discloses that, the purchase amount between the parties was agreed of Rs. 9,60,000/- for area of 1 H. 20 R. and both this documents are discloses that total amount of Rs. 19,20,000/- was agreed between plaintiff No.1 and the erstwhile owner of those properties. At the time of agreement to sale of Rs. 1,25,000/- of each property was paid and remaining amount was to be paid at the time of registration of sale deed. Those agreement to sale are in name of plaintiff No. 1.

20) Further the defendants are relying upon the affidavits sorn in by the attesting witness on the agreement to sale namely Shesherao Umaji Murmure, Pandit Ramaji Khokle, Ramchandra Maroti Bhise and Sahebrao Tukaram Miradkar. According to those witnesses the suit property bearing Gat No. 120 was jointly purchased by the plaintiff No.1 and defendant No.1. Further according to them the amount of Rs. 9,60,000/- was paid by the defendant No.1. To prove the possession over the suit property defendant have relied upon the affidavits of adjacent land owner namely Kailash Sonale, Jijabai Khokle and Manohar Murmure. However, those witnesses are on the agreement to sale and not attesting witnesses on the sale deed executed dtd. 23/04/2018. The statement made by the witnesses on affidavit is oral evidence but the evidence prima-facie produced by the plaintiff is the registered sale deed. The registered sale deed has presumptive value in the eyes of law. Further the plaintiff have also filed the affidavit of the erst

while owner of the Gat No. 120 namely Balaji Tukaram Murmure and Madhav Tukaram Murmure and they have stated on oath that they have agreed to sale the suit property with the plaintiff No.1 and they have executed registered the sale deed in the name of the plaintiff No.1 and have received the consideration amount from plaintiff No.1 and since then the plaintiff is in possession of the suit property.

21) On this backdrop of affidavits filed by plaintiffs and defendants. I am of the opinion that, who have purchased the suit property would be the question decided during the trial or after the trial by leading evidence to that effect. At present stage for deciding temporary injunction application it is necessary to consider that who is in possession of the property is the important question. For that purpose the plaintiff is relied upon the registered sale deed of property bearing Gat No. 120 area 1 H. 20 R. rebut the presumptive value to recital of the sale deed about possession the defendants ought to have produce any logically evidence to show that though the sale deed is in the name of the plaintiff, they are jointly in possession of the suit property and cultivating the same, such as receipts of land revenue, receipts of ploughings the land prima-facie receipts of electricity bill or any other document which show the possession of the suit property in favour of the defendant against the recital of sale deed. The affidavits produced by the both the sides are oral affidavits which cannot divert or direct the recitals in the

registered sale deed. Further it is to be consider that erstwhile owner have produced there affidavit stating therein that they have sold out their property to the plaintiff No.1.

22) Further the point raised by the defendant that they have contributed amount of Rs. 9,70,000/- towards purchase of the suit properties it appears that, the amount of Rs. 7,80,000/- was shown to be withdrawn on 01/01/2018, 28/02/2018, 16/04/2018, 03/04/2019, 09/04/2019 and 01/06/2019. In this context it is necessary to see the date of agreement to sale and sale deed. The agreement is executed on 17/03/2017 and sale deed is executed on 23/04/2018 which are not matching with dates mentioned in transaction produced by the defendants. Further those transaction are about self withdrawal which did not disclose that they have paid the amount either to the vendor of the property or plaintiff No. 1. The entry dtd. 07/06/2019 of Rs. 1,90,000/- is in the name of plaintiff from account of defendant no.1. But it is entry of making payment by the defendant no.1 to the plaintiff no.1 after more than 01 year from the date of execution of sale deed. Furthermore, as discussed above the question as to whether suit properties are self acquired or purchased jointly by the plaintiff No.1 and defendant No.1 would be the question of trial at present possession is to be find out.

23) Now coming to the over all of documents

produced on record prima-facie it appears that, though the panch witnesses on agreement to sale have deposed on oath that defendants No.1 is jointly purchased the suit properties with plaintiff and defendant is in possession of the properties, the sale deed executed after the agreement to sale is the executed document and certainly prevail over the agreement to sale as it is registered. Therefore the registered sale deed is over ride effect on the agreement to sale. Therefore, prima-facie it appears that, property bearing gat No.120 having admeasuring area of about 1H. 20R. is in possession of the plaintiffs. However, the plaintiffs have not produced registered sale deed bearing No.1452 in respect of another area of 1H.20R. purchased from Balaji Tukaram Murmure and only produced mutation entry No.1361 which would not sufficient to prove exclusive prima-facie possession of plaintiff No.1 on the backdrop of affidavits produced by the defendants. Further the plaintiff have not produced any document in respect of the property bearing survey No. 99/01 which is admeasuring of about 89R. situated at Chabhara and therefore the prima-facie possession of that property is not proved by the plaintiffs as on date of the filing of the suit. On perusal of documents it appears that, the plaintiffs have not produced a single document in respect of property bearing Gat No. 99/01 at village Chabhara. Therefore, plaintiffs failed to prove the prima-facie possession over that property and also non production of registered sale deed about property purchased from Balaji Tukarma Murmure will not prove

prima-facie possession over that property, though the fact of purchase of that property in the name of plaintiff No. 1 is admitted by defendants. But it was the admission to the extent of purchasing that property in the name of plaintiff No.1 and not about the possession. ***Hence I answered point No.1 in partly affirmative*** i.e. in respect of the property bearing Gat No. 120 admeasuring of about 1 H 20 R. land purchased from Madhav Tukaram Murmure only at village Jagapur.

**AS TO POINT NO.2 & 3 :-**

24) The documents produced on record in respect of property bearing Gat No.120 admeasuring 1 H. 20 R. i.e. sale deed bearing 1453/2018 would show prima-facie possession of the plaintiff No.1 over that property. Therefore, balance of convenience is tilting in favour of the plaintiff and if the injunction is not granted in respect of this property then more irreparable loss would be caused to the plaintiff than that of defendants. As discussed above the plaintiffs failed to prove the prima-facie possession over the property bearing survey No.99/1 and property purchased from Balaji Tukaram Murmure, the plaintiff is not entitled for discretionary relief of injunction. Hence ***I answered point No.2 & 3 in partly affirmative*** i.e. in respect of the property bearing Gat No. 120 area admeasuring of about 1 H. 20R. land purchased from Madhav Tukaram Murmure at village Jagapur.

**AS TO POINT NO.4 :-**

25) Considering the answers given to point No.1 to 3, in answer to point no.4 I pass the following order;

**ORDER**

1. Application is partly allowed.
2. The defendants No.1 to 4 are hereby temporarily restrained from causing obstruction to the possession of plaintiff No.1 over the property bearing gat No. 120 area admeasuring of about 1H.20 R. land purchased from Madhav Tukaram Murmure situated at Village Jagapur Tq. Hadgaon Dist Nanded.
3. The application in respect of property survey No.99/1 and property purchased from Balaji Tukaram Murmure bearing Gat No.120 area admeasuring of about 1H.20R. is hereby rejected.
3. The cost shall in main cause.

Place :- Hadgaon  
Date :- 24.10.2024

(Amarjeet B. Jadhav)  
Civil Judge, Junior Division,  
Hadgaon Dist Nanded.

**CERTIFICATE**

I affirm that the contents of this PD.F. file order/judgment are same word for word as per original order.

Name of steno : Anita S. Godam  
(Stenographer Grade - III)

Name of court : C.J.J.D.& J.M.F.C., Court  
Hadgaon

Order Date : 24.10.2024

Judgment/order signed  
by Presiding Officer on : 25.10.2024

Judgment/order  
uploaded on : 25.10.2024

