



ORDER BELOW EXH. 05 IN R.C.S. NO.23/2023

(Passed on dt. 12.06.2023)

01. Present application made by plaintiff/Applicant to restrain defendants from causing obstruction or interference for enjoyment of suit properties under Order- 39, rule-1 of the Code of Civil Procedure.

Brief facts of the case of plaintiff are as under :-

02. It is contention of applicant/plaintiff that he is resident of village Kolhari, Tal. Kinwat, Dist. Nanded. The land situated in G.No.37/1, of villaged Kolhari, Tal. Kinwat at extent to 01 H 00 R situated bounded as __

East- Land of Govind Ankurwad,

West – Remainaing part of Land Gut No.37/1 i.e. land of
deft.No.2

North – Land of Digamber Akkamwad & Datta Pandagale,

South – Land of Ram Deulwad.

(Concern property here-in-after as “suit property”)

03. The deft.No.1 was the owner of suit property, who sold the suit property to the deceased husband of the plaintiff namely Digamber Ankurwaad vide registered sale deed bearing No. 1545/2008 dated 13/05/2008. Since, it the husband of the plaintiff becomes owner and possessor of the suit property. After the demise of her husband,the mutation entry No. 1750 was effected, thus the plaintiff became the owner and possessor of the suit property. In the year 2010, deft.No.2 and her sister namely Sayabai W/o. Prakash Adewad filed the suit RCS No. 23/2010 at CJJD at Kinwat, against deft.No.1 for the partition and separate possession of the G.No.37,37/1 and 37/3 situated at Kolhari, Tal. Kinwat, Dist. Nanded. The present plaintiff was the necessary party to said

suit. RCS No. 23/2010 was decreed in term as- *“It hereby declared that the plaintiff No.1, plaintiff No.2 and defendant No.1 is having 1/3 share each in the suit properties”*.

04. In accordance with decree passed in RCS No. 23/2010 and its execution, the deft.No.1 allotted with 1/3 share in the G.No.37/1 at extent to 0 H 80 R and in G.No.37 extent to 00 H 80 R. While the execution of decree Thasildar mutated the suit property in the name of deft.No.1 by canceling previous mutation entry No. 1750 mutated in favour of plaintiff. But defendants returned the possession of the suit property to plaintiff as the deft.No.1 was sold the suit property to the husband of the plaintiff. The registered sale deed bearing No. 1545/2008, dated 13/05/2008 is binding on deft.No.1

05. That, on 26/02/2023 deft.No.1 came in the suit property. He shown a copy ownership of suit property i.e. 7/12 and threatened the plaintiff to vacate peaceful possession. He also threatens the plaintiff to be killed and alienate the suit property. Plaintiff went to lodged report at P.S.Islapur but police suggested to the plaintiff knock the door of the court.

06. That the defendant sold the suit property G.No.37/1 to the husband of the plaintiff deceased Digamber Ankurwad by way of registered sale deed bearing No. 1545/2008 on dated 13/05/2008 and the same is binding on deft.No.1 and defendant got same share in partition suit which was sold to the husband of the plaintiff. Therefore, defendants have no right to disposes the plaintiff from the suit property. Husband of the plaintiff was legal purchaser of the suit property, therefore, the plaintiff is legal owner and possessor of the suit property. There is every apprehension that the defendants dispossess plaintiff and is every apprehension that the defendants are selling the suit property or

causing change of hand or creating third party encumbrance over for complicating the matter and for harassing the plaintiff. Thus, the plaintiff will be deprived of the rights to which he entitled and the loss caused thereby will be such that it cannot be compensated in terms of money, Hence, the plaintiff filed present application for temporary injunction to restrain the defendant from causing third party interest in the suit property.

Brief facts of the case of Deft. No. 1 are as under :

07. Deft.No.1 has filed his written statement at Exh.21 and denied the contention of the application. It is contention of deft.No.1 that RCS No.23/2010 filed by Sayabai & others Vs. Datta & Other was decreed, in its, execution deft.No.1 received the suit property. The plaintiff has not file the appeal against decreed passed in RCS No. 23/2010. Present, the plaintiff has proper knowledge about proceeding. Deft.No.1 has preferred appeal No.38/2018 against decree passed in RCS No. 23/2010, but same was dismissed. Thereafter, present deft.No.1 preferred appeal before Hon'ble High Court which is pending. The application is not filed in accordance with law. Accordingly, deft.No.1 prayed to reject the application.

Brief facts of the case of Deft. No. 2 are as under :

08. Deft.No. 2 has filed her say at Exh. 18. She has not objected the present application and prayed to allowed the application.

09. Ongoing through contentions and submissions of both sides, following points arise for my determination and I record its findings thereon, with reasons, as under-

Sr.No.	Points	Findings
01)	Does the plaintiff prove that he has made out prima-facie case ?	 In Negative
02)	Does plaintiff prove that balance of convenience lies in their favour ?	 In Negative

03)	Does plaintiff prove that he would suffer irreparable loss, if temporary injunction is not granted as prayed for ?	 In Negative
04)	What order ?	 As per final order

RESONS

10. Heard Learned counsel Shri. D.M.Darade for plaintiff, Ld. Counsel Shri. D.G.Kale for deft.No.1 & 2. Perused record and proceedings. I have also gone through written notes of argument Exh.24 filed by plaintiff and Exh. 25 filed by defendant.

AS TO POINT NO. 1 :-

11. So far as this point is concerned, it is required to be seen as to what is a prima-facie case. In establishing a prima-facie case, plaintiff need not establish his title. It would be sufficient for him to show that he has a fair question to raise as to existence of his right. While examining the question of prima-facie case the Court has to satisfy that the claim was not frivolously vexatious, in other words there is a serious question to be tried.

12. According to the Plaintiff, her husband had purchased the suit property from deft.No.1 vide registered sale deed No.1545/2008, she also filed registered sale deed alongwith Exh.04, it prima-facie appears that Digamber Ankurwad purchased 01 H out of 02 H situated in G.No.37/1 of village Kolhari, Tal.Kinwat from Datta Deulwad.

13. It is submission of learned counsel of the plaintiff that previous suit RCS No. 23/2010 is filed by Sayabai Aadewad was decreed for the partition. In execution of said decree, plaintiff and defendants of said suit received 1/3 share in the entire suit property of RCS No.23/2010.

14. It is contention of the plaintiff that the property purchased by husband of the plaintiff has been allotted to deft.No.1 Datta Deulwad in the execution of decree of RCS No.23/2010. The suit property was sold to the husband of plaintiff. Same portion of land was allotted to deft.No.1. The registered sale deed bearing No. 1545/2008 is binding upon deft.No.1. Therefore, the plaintiff is remained owner of suit property. However, present deft.No.1 is trying to alienate the suit property or trying to third party interest. If suit property is transfer then plaintiff will suffer economical loss.

15. The learned counsel of the plaintiff is also relied on judgment of Hon'ble Supreme Court passed in T.G.Ashokumar Vs. Govindammal & Oths. Passed in 08th December, 2010, wherein Hon'ble Apex Court discussed provision of lis-pendent and Section 52 of transfer of property as-.

“The principle underlying Section 52 is clear. If during the pendency of any suit in a court of competent jurisdiction which is not collusive, in which any right of an immovable property is directly and specifically in question, such property cannot be transferred by any party to the suit so as to effect the rights of any other party to the suit under any decree that may be made in such suit. If ultimately the title of the pendente lite transferor is upheld in regard to the transferred property, the transferee's title will not be affected. On the other hand, if the title of the pendente lite transferor is recognized or accepted only in regard to a part of the transferred property, then the transferee's title will be saved only in regard to that extent and the transfer in regard to the remaining portion of the transferred property to which the transferor is found not entitled, will be invalid and the transferee will not get any right, title or interest in that portion. If the property transferred pendente lite, is allotted in entirety to some other party or parties or if the transferor is held to have no right or title in that property, the

transferee will not have any title to the property. Where a coowner alienates a property or a portion of a property representing to be the absolute owner, equities can no doubt be adjusted while making the division during the final decree proceedings, if feasible and practical (that is without causing loss or hardship or inconvenience to other parties) by allotting the property or portion of the property transferred pendente lite, to the share of the transferor, so that the bonafide transferee's right and title are saved fully or partially."

the fact of above cited authority is related to transfer of property during pendency of suit which is different from the fact of present case, thus above cited authority is not helpful to the plaintiff.

16. It is main contention of the plaintiff that court has decreed the suit RCS No. 23/2010, but the plaintiff has not placed copy of the judgment and decree on the record. Therefore, the contention of present application could not supported by the copy of previous proceeding. The Plaintiff has filed copy of mutation entry No. 2607, on perusal of said, it appears that said was effected in accordance with execution proceeding darkhast No. 04/2018, however, copy of concern darkhast has not placed on record.

17. Plaintiff has not filed copy of the judgment and decree passed in RCS No. 23/2010 and copy of darkhast No. 04/2018 for the perusal of the court, The Plaintiff has not shown any cause for non filing related documents. Accordingly, it appears to be suppression of material fact. accordingly, it is unable to held that plaintiff has prima-facie case. Therefore, I record negative finding of the point No. 1.

AS TO POINT NO. 2 & 3:-

18. 'Balance of convenience' means the comparative mischief or inconvenience to the parties. In arriving at the balance of convenience, the court has to weigh the mischief likely to be caused applicant, if the

interim relief is refused. At the same time, it has also to compare the injury likely to be caused to the other side, if the interim relief is granted.

19. *'Irreparable loss or injury'* means such injury which cannot be adequately remedied by damages. The remedy by damages would be inadequate if the compensation ultimately payable to the applicant in case of success in the suit would not place him in the position in which he was before injunction was refused.

20. On perusal of revenue record filed alongwith Exh.04, it appears that 01 H 20 R land stands in the name of Madalsa Helchel and 0 H 80 R stand in the name of deft.No.1 in accordance with execution proceeding of Darkhast No. 04/2018. However, the contention of plaintiff in respect of suit property could not prima-facie established due to non filing of copy and decree of previous RCS No. 23/2010. The Plaintiff has not shown any cause for non filing related documents. Accordingly, it is appears to be suppression of material fact. Hence, point of balance of convenience and irreparable loss be established in favour of plaintiff. Therefore, I record negative finding of point No. 2 & 3.

AS TO POINT NO. 4 :-

21. In view of finding below Point No. 1 to 3, present application is liable to be reject. Accordingly, following order is passed.

O R D E R

- 01) The application of temporary injunction is rejected.
- 02) Cost in cause.

Kinwat

Dated: 12.06.2023

(S. B. Ambhore)

C.J. J.D., Kinwat

MHND180002242023

R.C.S. No.23/2023

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ORDER / EXH. 05

Anjanabai Vs. Datta & Oths.

Certificate

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

Name of the Stenographer	:	S.M.Chitmalwar
Court Name	:	Court of C.J.J.D., Kinwat
Date	:	12/06/2023
Order signed by		
the Presiding Officer on	:	12/06/2023
Order uploaded on	:	13/06/2023

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