

MHND180005832020



ORDER BELOW EXH.5

1. This is an application for temporary injunction restraining defendants, from interfering and obstructing in a peaceful possession of the plaintiff over the suit land under Order 39 Rule 1 and 2 of the Civil Procedure Code.

2. It is case of the plaintiff that he is owner and possessor of the land admeasuring 0 H 47 R from and out of land G.No. 123/1 of village Ghoti, Tal. Kinwat, Dist. Nanded bounded as

East-the land of Venkat Madanna Dugelwar,

West- the land of Sanjay Narsingrao Sankneniwar,

North-land of defendant No.1 of same survey number and

South-land of Gopikabai Narsingrao.

(hereinafter referred as “the suit land”)

3. The plaintiff purchased the suit land on 17.06.2015 through as a registered sale deed bearing No. 1560/2015. Name of the plaintiff has been recorded in revenue record vide mutation entry No. 2841 as owner and possessor. As such the plaintiff is owner and possessor of the suit property. On 13.06.2020 and 17.06.2020 the defendants obstructed the plaintiff in agricultural work and threatened him to kill him if the plaintiff came in the suit land. The plaintiff also reported the incident 17.06.2020 to the police station and which was registered as N.C.No. 212/2020. Cause

of action arose for filing this suit. The plaintiff moved this application for temporary injunction restraining defendants from interfering and obstructing into the possession of the plaintiff over the suit land. Hence, this application.

4. The defendants contested the suit vide written statement Exh.19. By filing pursis at Exh.21, the defendants informed this court to treat the written statement as say to the T.I application. The defendants denied the ownership and possession of the suit land of the plaintiff. It is also denied that the plaintiff purchased the land from Rajesh Mallalrao Narneniwar. It is further contended that the said Rajesh Narneniwar was not in possession of the suit land and accordingly Rajesh Narneniwar never delivered possession of the suit land to the plaintiff. The sale deed of the plaintiff is false and forged document. Mutation entry was effected behind the back of the defendants. It is further case of the defendants that the seller of the plaintiff namely Rajesh Narneniwar on 23.09.2014 executed agreement to sale of suit land in favour of defendant No.1 and handed over the possession of the suit land to the defendant No.1. It was agreed to execute the sale deed after payment of remaining amount of Rs. 50,000/-. However, said Rajesh Narneniwar leave the Kinwat since 2015 and never returned back and the defendants did not know whereabouts of Rajesh Narneniwar. Therefore, the sale deed could not be executed. The defendants are in possession as per agreement of sale. The defendants also contended that the boundaries of the suit land are incorrect. There are no boundary marks on the northern side. The defendants are in possession and they have took borewell on the suit land. The defendants never obstructed to the plaintiff. On the contrary the plaintiff came on the suit land at the time of sowing of Saoyabean and threatened to kill the

defendants. He also instigated to his men to beat the defendants. There is no question of obstruction of the hands of defendants as defendants themselves are in possession. It is further contended that the plaintiff has no prima-facie case, balance of convenience does not arise in his favour and question of irreparable loss does not arise. Lastly, the defendants prayed for rejection of the application.

5. Following points arise for my determination to which, I record my findings thereon for reasons to follow:

Sr. No.	POINTS	FINDINGS
1	Whether plaintiff is having prima facie case ?	In the affirmative
2	Whether the balance of convenience lies in favour of plaintiff ?	In the affirmative
3	Whether plaintiff would suffer irreparable loss, if injunction is refused ?	In the affirmative
4	What order ?	As per final order.

: REASONS :

POINT NO.1:

6. I have perused written arguments of plaintiff Exh. 24 and of defendants at Exh. 25.

7. In support of claim, the plaintiff relied upon 7/12 extract of the suit land, copy of mutation entry No. 2841, copy of sale deed bearing No. 1560/2015 date 17.06.2015, copies of police complaint dated

14.06.2020, copy of NC No. 212/2020, copy of sale deed of seller of the plaintiff bearing No. 165/2014 dated 13.01.2014.

8. Whereas the defendants placed on record agreement to sale on a Non-Judicial bond of Rs. 100/- dated 23.09.2014.

9. The plaintiff claim his ownership and possession over the suit land on the basis of the registered sale deed. On Perusal of the sale deed No. 1560/2015, it appears that Rajesh Narneniwar sold the suit land to the plaintiff for consideration of Rs. 5,32,000/-. It is also mentioned in the sale deed that consideration of amount Rs. 5,32,000/- has been received by the Rajesh Narneniwar and possession of the suit land was also handed over to the plaintiff on the sale deed. The boundaries mentioned in sale deed and mentioned in the plaint are one and same. The sale deed is of dated 17.06.2015. On the basis of sale deed mutation entry No. 2841 has been recorded in the name of plaintiff. On perusal of 7/12 extract, it appears that name of the plaintiff has been recorded as owner and possessor of the suit land. From these documents i.e. sale deed, mutation entry and 7/12 extract it is prima-facie established that the plaintiff purchased the suit land from Rajesh Narneniwar in the year 2015 and his name has been recorded as owner and possessor of suit land.

10. The defendants came with contention, claiming their possession over the suit land, that the seller of the plaintiff namely Rajesh Narneniwar executed agreement to sale on dated 23.09.2014 in favour of defendant No.1. The defendants also contended that there is no land between the boundaries shown by the plaintiff in existence on the spot. It is further contention of the defendants that the defendants are in possession of the suit land on the basis of agreement of sale. The

defendants filed on record a Non-judicial bond of Rs. 100/- posed as agreement to sale. On perusal of the said document it appears that it has been executed on 23.09.2014. The boundaries shown in the agreement to sale are different than the boundaries shown in the plaint. It is contention of the defendants that the seller of the Rajesh Narneniwar executed to sale in favour of the defendants. The defendants also claimed possession on the basis of so called agreement to sale deed dated 23.09.2014. It means the defendants have admitted the ownership and possession of the seller of the plaintiff Rajesh Narneniwar.

11. The plaintiff have placed on record the copy of sale deed No. 165/2014 dated 17.01.2014 of Rajesh Narneniwar. It appears that Rajesh Narneniwar purchased the land from Kishanrao Sangneniwar. It is pertinent to note here that the boundaries shown in sale deed No. 165/2014 and boundaries shown in alleged agreement to sale are different. When the defendants are claiming that the Rajesh Narneniwar executed the agreement to sale and delivered his land. How they executed agreement to sale mentioning the boundaries which are not in consonance with sale deed of Rajesh Narneniwar. On the contrary the boundaries shown in the plaint, in the sale deed of the plaintiff are one and same and well consonance with the sale deed of Rajesh Narneniwar. Therefore, the contention of the defendants that the boundaries are incorrect is not acceptable.

12. Moreover, the alleged agreement to sale is dated 23.09.2014. It appears from the agreement to sale that the defendants alleged to have paid Rs. 6 Lakh and Rs. 50,000/- was remained to be paid. If the defendants are giving such huge and considerable amount then why that

agreement was not got registered. Moreover, no explanation is coming from the defendants that as to why they not proceeded against Rajesh Narneniwar for getting the sale deed executed. It is also not the case that the defendants claimed and insisted Rajesh Narneniwar for specific performance of that agreement to sale. Therefore, serious doubt arose about genuineness of the agreement of sale. On the contrary the claim of the plaintiff is based upon registered document which is corroborated by the entry of revenue record. The boundaries shown by the plaintiff are one and same with the sale deed of the plaintiff and his seller Rajesh Narneniwar. As against this boundaries shown in the agreement of the sale is not inconsonance with the sale deed of Rajesh Narneniwar. It is well settled law that registered document got its own sanity and it cannot be easily disturbed. At this stage the agreement to sale cannot be taken into consideration in lieu of registered sale deed. Therefore, I am of the opinion that the plaintiff prima-facie established his ownership and possession over the suit land. Therefore, I hold that the plaintiff has prima-facie case and accordingly record against point No. 1 is affirmative.

POINT NO. 2 AND 3

13. The plaintiff being owner and possessor of the suit land is entitled to enjoy the property without disturbance. If the defendants are not restrained there is every possibility to cause of obstruction into peaceful enjoyment of the suit property of the plaintiff. If defendants succeeded, there is every possibility that plaintiff will be dispossessed. Therefore, balance of convenience lies in the favour of the plaintiff. If the defendants could not enjoy the property and if the plaintiff has been dispossessed, irreparable would loss cause to the plaintiff. Accordingly I

hold that balance of convenience lies in the favour of the plaintiff and irreparable loss would cause of the plaintiff. Hence, I record findings against Point No. 2 and 3 in affirmative.

14. **POINT NO.4** :- In answer to this point, I pass the following order.

ORDER

1. The application (Exh.5) is allowed.
2. The defendants, or anybody else claiming through them are hereby restrained from causing any interference and obstruction into the peaceful possession and enjoyment of the plaintiff over the suit land, till the final decision of the suit.
3. Costs in main cause.

Date :29/08/2020
Place: Kinwat.

(Jahangir R. Pathan)
Civil Judge Junior Division
Kinwat, Dist.Nanded.