

	Reg. Civil Suit No. 114/2024 Sayyad Babu -Vs- Sk. Imran + 03 Exh. No. 05
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IN THE COURT OF CIVIL JUDGE (JR.DN.) KINWAT

Regular Civil Suit No.114/2024

Plaintiff:- Sayyad Babu S/o. Sayyad Mehtab

-VERSUS-

Defendants:- Shaikh Imran S/o Shaikh Mahetab +03

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Advocate for the Plaintiff : Shri. D. M. Darade
Advocate for the defendants : Shri. K. S. Quazi
.....

ORDER BELOW EXH.5

(Passed on 23.01.2025)

The plaintiff has filed this application under Order 39 Rule 1 and 2 of Code of Civil Procedure for grant of temporary injunction restraining the defendants from causing interference to his possession over suit property survey no.61 admeasuring 00 H. 03 R situated at Chikhli (Kh.), Tq. Kinwat, Dist. Nanded. The defendants by filing their written statement cum say at Exh.18 have strongly opposed the application.

2. Heard Shri. D. M. Darade learned advocate for plaintiff and Shri. K. S. Quazi learned advocate for defendants. Perused the application, say filed thereon, plaint and documents submitted by both the parties.

3. It is the case of plaintiff that, he and his relative Abdul Rahim Shaikh Imam jointly purchased the suit property from Husnaji Gangaram Gingule on 31.03.2000 vide registered sale deed

bearing no. 787/2000 and on the same day he and Abdul Rahim was delivered the possession of suit property. The suit property was also mutated in their names in revenue record vide mutation entry No.431. Thus, he and Abdul Rahim became the joint owners and possessors of suit property. Thereafter, in partition between plaintiff and Abdul Rahim, the eastern portion of land i.e. suit property came to the share of plaintiff. Since, then the plaintiff is exclusive owner and possessor of suit property. The defendants have no concerned with the suit property. On 12.11.2024 at 11.00 am, plaintiff with the help of his laborers was erecting shed on the suit property. At that time defendants illegally came on the suit property and threatened the plaintiff and his laborers to vacate the possession, else to face dire consequences. The plaintiff immediately lodged report against the defendants, but police did not take any action. Therefore, the plaintiff has constrained to file this suit for declaration that he is owner of suit property and for perpetual injunction against the defendants and by way of this application prayed for temporary injunction till final disposal of suit.

4. Per contra, defendants contended that the suit property was originally owned by their grandfather Munawar Khan. Earlier the survey number of suit property was 218 and it is renumbered as survey number 61. The defendants have succeeded the suit property and are still in continuous possession thereof. The alleged vendor of plaintiff namely Gangaram or his son Husanaji had no concern with the suit property. The name of Gangaram and his son Husanaji was mistakenly entered into 7/12 extract. By taking the undue advantage of his name in the 7/12 extract, Husanaji executed sale deed no. 787/2000 in favour of plaintiff and Abdul Rahim. Therefore, the said

sale deed and mutation entry being false and bogus is not binding upon defendants. The plaintiff has not come with the clean hands before this Court. The plaintiff has lodged false report and on basis of false and bogus documents has instituted this false suit. Lastly, they prayed for rejection of this application.

5. Considering the rival submissions of the parties and for deciding the application for temporary injunction following points arise for my determination. I have recorded my findings thereon alongwith reasons thereof as follows;

Sr. No.	Points for determination	Findings
1.	Whether the plaintiff has prima facie case?	Yes.
2.	Whether the balance of convenience is in favour of plaintiff?	Yes.
3.	Whether the plaintiff would suffer irreparable loss if temporary injunction is refused?	Yes.
4.	What Order?	Application allowed.

REASONS

6. The plaintiff in support of his submission has filed sale deed dated 31.03.2000, mutation entry no.431 and 7/12 extract of suit property survey no.61. The defendants have not produced any documentary evidence on record of this case.

Point No.1 to 4 :

7. All these points being interconnect are discussed together to avoid repetition in discussion. Learned advocate for plaintiff argued that the documents filed on record clearly shows that the plaintiff is owner and possessor of suit property. Therefore, he is entitled for protection of his possession. On other hand, learned advocate for defendants argued that the vendor of plaintiff had no

title to the suit property. Therefore, he could not pass the valid title in favour of plaintiff.

8. The plaintiff has produced the registered sale-deed dated 31.03.2000 to prove his ownership over suit property. The perusal of this sale deed dated 31.03.2000 reveals that Husnaji Gingule who was the owner of land survey No. 91 admeasuring 00H. 06 R. sold it jointly to plaintiff and Abdul Rahim. The mutation entry no. 431 further shows that the suit property is mutated jointly in the names of plaintiff and Abdul Rahim on the basis of said sale-deed. It seems not in dispute that the old survey number of suit property Survey No. 61 was 91. Thus, it is clear that by virtue of sale-deed dated 31.03.2000 plaintiff being joint purchaser was owner of half portion i.e. 00H. 03R. Accordingly mutation entry no. 431 was recorded. The 7/12 extract annexed therewith further shows that accordingly half portion i.e. 03R. land is recorded in the name of plaintiff.

9. Thus, the documentary evidence produced by plaintiff clearly shows that he purchased the suit property from Husnaji Gingule vide sale-deed dated 31.03.2000. This sale-deed is registered document. The mutation entry has also been recorded based thereon. This registered sale-deeds and mutation entry recorded by public servant carries presumptive values as to its genuineness. It is nowhere the case of defendants that they have challenged this sale-deed or mutation entry. The defendants have not produced any title document in their favour or in their grandfathers' name in respect of suit property. They have also not produced any reliable evidence to show their actual possession.

10. Prima facie case does not mean that the plaintiff has to prove his cent percent case at this stage. Prima facie case means the

contentions raised by the plaintiff requires the consideration and is not outrightly liable to be rejected. In the present case, an unchallenged registered sale-deed in favour of plaintiff is more than prima facie proof to show his ownership of suit property. As per sale-deed and other revenue record plaintiff is in possession of suit property. The defendants are not able to show by adducing reliable proof that they are actually in possession of suit property. All these aspect leads the plaintiff to prove prima facie case in his favour and that the balance of convenience also lies in his favour. The plaintiff has narrated the specific instance with date about obstruction to his possession by defendants. The plaintiff immediately after obstruction has reacted by filing this suit. Under such circumstances if defendants are not restrained by way of temporary injunction and their obstruction continued further, plaintiff would suffer irreparable loss. Accordingly, I answer point no.1 to 3 in affirmative and in the result in answer to point no.4, I proceed to pass following order.

ORDER

1. Application (Exh.05) is allowed.
2. The defendants or anybody on their behalf by way of this temporary injunction are restrained from causing any obstruction to the possession of plaintiff over the suit property survey no.61 admeasuring 00 H. 03 R situated at Chikhli (Kh.), Tq. Kinwat, Dist. Nanded, describe in para no. 2 of plaint till final disposal of this suit.
3. Cost in main cause.

(Pronounced in open court)

Date-23.1.2025.

(K. G. Mendhe)
Civil Judge, (Jr. Dn.)
Kinwat

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 Joint Civil Judge J.D. Kinwat.

Date : 23.01.2025

Order signed by the

Presiding Officer on : 24.01.2025

Order uploaded on : 27.01.2025
