

MHND220008962020

**IN THE COURT OF CIVIL JUDGE (S.D.) AT MUKHED****(Presided Over by- Y. B. Game)****Spl. Civil Suit No.24/2020**

Keshav Dhondiba Bhalerao

-Plaintiff-

V/s.

Gram-Panchyat Office at Manjri,
Through Gramsevak & Another.**-Defendants-****ORDER BELOW EXH :- 5****(Passed on 14/09/2022)**

1] This is an application Under Order 39 Rule 1 and 2 of the Code of Civil Procedure for temporary injunction to restrain the defendants from interfering with possession of the plaintiff over the suit property.

2] The subject matter of the suit is the house No.22, ad-measuring 825 Sq. Mtr., situated at Mouje Manjri Tq. Mukhed. The defendant No.01 is the Gram-Panchayat Manjri, defendant No.02 Nirmala Waghmare is the daughter of real sister of the plaintiff.

The suit house property was in name of father of the plaintiff, who died on 26/08/1995, it was given to him under scheme by the Government in the year 1983. The suit property was mutated in his wife name [Muktabai], after his death. The Muktabai died on 18/08/2016, left behind him the plaintiff and two daughters.

According to the plaintiff, he was working in telephone department in Mumbai, he was resided in Mumbai. The suit house property, after death of her mother was mutated in name of the plaintiff in the year 2016, since thereafter it is stated that the plaintiff is owned and possessed the suit house property.

3] According to the plaintiff, he took voluntarily retirement on 30/01/2020, thereafter shifted to Mukhed and had visited the office of defendant No.01 for paying the house tax on 13/10/2022, the defendant No.01 officer had informed the plaintiff of cancelled the entry of his name of recorded house suit property in his name in record maintain by the Gram-panchyat office. It is alleged that on inquired the defendant No.01 authority had given evasive reply, the act of defendant No.01 to cancel the name of the plaintiff over the suit property was in collusion with the defendant No.02. The defendant No.02, on that basis tried to disposes the plaintiff from the suit house property.

It is stated that the defendant No.02 took advantage of resided the plaintiff at Mumbai, in his absences recorded her name in right of suit house property by collusion with the defendant No.01, without any right, therefore suit is filed for declaration of ownership and possession and prayed for the perpetual injunction protect his possession over the suit house property.

4] The present application is filed to grant temporary

injunction against the defendants from interfering with the peaceful possession of the plaintiff over the suit property.

5] The defendant No.02 has filed this say vide Exh.23 denied that the plaintiff is owner and possessor suit house property. It is stated that the house property was gifted her by her grand mother i.e. Muktabai Dhondiba by gift deed, on that basis name of the defendant No.02 is recorded on suit house property by defendant No.01 in record of right of house extracts, she has paid tax of suit house property to defendant No.01 on the basis of her name recorded in 8/A extracts, from 2006 to 2014. It is stated that the defendant No.02 has possessed the suit house property, the plaintiff has obstructed the possession defendant No.02 over the suit house property, therefore the R.C.S. No.340/2020 filed for the perpetual injunction against the plaintiff which is sub-judiced before the Court of Civil Judge Junior Division Mukhed.

It is stated that the defendant No.02 has right in suit house property, the defendant No.01 Gram-Panchayat has recorded the house property in name of the defendant No.02 on the basis of gift deed, since 2006 thereafter, the plaintiff has not filed any objection on the recorded name of defendants over the suit house property.

It is further stated that the deceased [Muktabai] has left behind her two daughters namely Jijabai and Satyabhama. The suit is filed for declaration of ownership of the suit house property, the

two daughters of deceased Muktabai are the necessary parties in suit.

The defendant No.02 is gifted the suit house, her name is mutated in record of right, she is the occupied the suit house property, therefore it is stated that there is no question of protecting possession of the plaintiff over the suit house property.

6] The following points arise for my determination. I have recorded my findings for the reasons given below.

Sr. No.	POINTS	FINDINGS
1	Whether the plaintiff have made out a prima facie case for seeking relief of temporary injunction ?	Negative
2	Whether the balance of convenience lies in favour of the plaintiff ?	Negative
3	Whether the plaintiff would suffer an irreparable loss if temporary is refused ?	Negative
4	What order ?	As per final order.

7] Heard both side perused the application, say filed by defendants and documents produced on record.

REASONS

As to Points No.1 to 3

8] The both side have produced the documents before court, in support of oral submission. The plaintiff relied on the list of documents below Exh.07, produced 8/A extracts of house property

recorded his name on suit house property, the application dated 14/10/2020 to the Block Development Officers Panchayat Samiti Mukhed, the Copy of death certificate of Muktabai Dhondiba Bhalerao, the Copy of the list holders allotted the houses under this scheme.

The defendant No.02, on other hand has produced on record documents i.e. 8/A extracts of suit house property of 2010-2011, 2014-15 issued by Grampanchyat, photo Copy of gift deed, photo Copy of plaint of the suit R.C.S. No.340/2020 filed by the defendant No.02 for perpetual injunction, the Copy of the house tax paid receipts of 2009 and 2014.

9] The learned advocate for the plaintiff is submitted that the suit house was owned by his father, it was given to his father by the Government under the scheme. After death of his father in 1995, it was owned and possessed by her mother Muktabai, she died on 18/08/2016. The plaintiff has become the owner of the suit house property, after death of her mother. The learned advocate is relied on documents i.e. list of the house allotment, produced on record, stated the name of his father Dhondiba Kerba at serial No.101. The plaintiff further produced on record the death certificate of his mother to show that she died on 18/08/2016. The 8/A extracts is also produced on record to show that the name of the plaintiff is recorded on suit house property after death of the her mother, in 2016.

It is sought to argue that though the plaintiff worked and resided in Mumbai, he has been in possession of the suit house property. He retired in 2020, visited the office of the defendant No.01 for paying tax, the tax was not accepted on ground that the defendant No.01 has cancelled entry of recorded the name of the plaintiff over the suit house in Grampanchyat record. It is further argued that the plaintiff has filed complaint to Block Development Officers, Panchyat Samiti, Mukhed on 14/10/2020 against cancelled entry of his name recorded against the suit house in Grampanchayat record. The plaintiff is produced on record the entry made by the Grampanchyat in it's record of cancelled his name on suit house property and the complaint dated 14/10/2020 filed by the plaintiff agaisnt the said cancellation to the Block Development Officers Panchyat Samiti Mukhed.

It is emphasized that the plaintiff is the owner and the possessor the suit house property, after death of the her mother. The defendant No.02 has no concerned with the suit house property, she has obstructed the possession of the plaintiff over the suit house property unlawfully, therefore it is necessary to restrict the act of defendants from disposing the plaintiff from the suit house property, during pendency of the suit.

10] On other hand learned advocate of the defendant No.02, vehemently submitted that the suit house property possessed by the defendant No.02, she is the grand daughter of the deceased

Muktabai who owned the property, she has gifted the suit house property to the defendant No.01 during her alive by executing the gift deed, on that basis name of the defendant No.02 is mutated on suit house property in record of in Gram-panchayat in 2006, the defendant No.02 has occupied the suit house property and paid the tax in between 2006 to 2020. The defendant is the relied on the photo copy of the gift deed, 8/A extracts recorded his name in record of right issued by defendant No.01 Manjri Gram-panchayat, as well as tax paid receipts of the house property.

It is further argued that the plaintiff has not come with clean hand, the suit is prayed for declaration of ownership and possession, the suit house property was inherited from the mother, the plaintiff has two real sister namely Jijabai and Satyabhama, they are the necessary parties in suit however not been added.

11] It is revealed that the plaintiff is claiming to possess the suit house property based on entry recorded the suit house in his name in record of the Gram-panchayat. The plaintiff claims the property as a legal heir of the deceased Muktabai who owned the suit house property.

The defendant No.02 also claims to have possessed the property based on gift deed, it is stated that the suit house property is recorded in her name in 2011 by virtue of the gift deed given by the Muktabai during her alive.

12] The defendant No.02 has produced on record the 8/A extracts of suit house property recorded in her name and the tax paid receipts of the suit house property, in between the 2009 to 2015.

13] The plaintiff's claim to possess the suit house property is based on only 8/A extracts recorded his name in suit house property in 2015-16, being the heir deceased [Muktabai], except this there is no prima-faice documents to disclose the suit house has been possessed by the plaintiff.

On other hand, the 8/A extracts of 2010-11 and 2014-15 of suit house property stated that the property is in name of the defendant No.02. The said entry is recorded on the basis of gift deed, the copy of the gift deed is produced on record. The defendant No.02 has seen to occupy the suit house based on the tax paid receipts from 2009 to 2015 produced on record.

It is prima-faice seen that the plaintiff is claiming ownership on basis that the suit house property is inherited one, the plaintiff has not denied that the he is having two real sister, who are not made party in the suit for declaration of ownership of the suit house property. It is also seen that the defendant No.02 is the daughter of the real sister of the plaintiff.

14] The prima-facie, documents produced on record have not show that the plaintiff has been in possession of the suit house

property. Therefore there is no question of interim injunction against the defendants to protect his possession over the suit house property. It is also seen that the plaintiff is prayed for declaration of ownership of the suit house property stated to be owned by his mother, it is seen that the plaintiff is having two sister namely Jijabai and Satyabhama, the plaint is not pleaded about the sisters it is also prima-facie seen that the necessary parties are not added in the suit.

I, therefore, held that the plaintiff has failed to prove the prima-facie case, the plaintiff is not found in possession therefore no balance of convenience lies in favour of him, therefore question of causing irreparable loss does not arise, if the injunction is not granted, I accordingly the answer the points No.1 to 3 in Negative.

As to Point No.4

15] On taking into consideration the finding recorded for points No.1 to 3, in order to record finding to this point, I pass following order

O R D E R

The application is rejected.

Place : Mukhed
Date : 14/09/2022

(Y. B. Game)
Civil Judge, Senior Division,
Mukhed.

Order below Exh.5

CERTIFICATE

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

Name of the Stenographer		Wadje B.M.
Court Name		Civil Judge, Senior Division, Mukhed
Date:		14/09/2022
Judgment signed by the Presiding Officer On		14/09/2022
Judgment uploaded on		16/09/2022