

Regular Civil Suit No.37/2015
(CNR No.MHNG14-000482-2015)
Durga/Somesh and others

ORDER BELOW EXH.5

(Passed on 4th day of January, 2018)

1. In order to restrain the defendants from trespassing into and interfering with the peaceful possession of plaintiffs over the agricultural land bearing survey no.130 admeasuring 1.24 HR situated at mouza Amdi, Tahsil Parseoni, District Nagpur (hereinafter referred as "suit property" for the sake of brevity) during the pendency of this suit, the plaintiffs have filed this interlocutory application under Order XXXIX Rules 1 & 2, r/w 151 of the C.P.C. for grant of temporary injunction.

2. The facts giving rise to the filing of this application are abridged as under:-

According to plaintiffs, previously bandobast khasara no.325/1, 325/2, 326/1, 326/2, 326/3, 326/4, 327/1, 327/2 and 327/3 were the fields belonging to the family of Laxman Basole. Said property was partitioned in which survey no. 325/2, 326/2, 326/3 and 327/3 came to the share of son of Laxman Basole namely plaintiff no.2 Sukal Laxman Basole (father of plaintiff no.1) and after starting consolidation proceedings in village Amdi in 1975-76 the aforesaid survey numbers were consolidated and the field property of plaintiff no.2 Sukal Basole got Gat No.293 admeasuring 5.12 HR. Thereafter in 1989-90 resurvey proceedings were started in village Amdi and field Gat No.293 was divided in survey nos.129, 130, 131, 126 and part of

survey no.127. During resurvey proceedings many mistakes were committed due to which suit property came to be wrongly recorded in the name of father of defendant no.1 namely Kanhaiyya Kashiram Basole and after his death, the names of defendant nos.1 to 3 seems to have been mutated in the revenue record of suit property.

3. According to plaintiffs, infact the suit property was part of previous Gat No.293 and it was recorded in the name of plaintiff no.2 Sukal Basole. It came to the plaintiff no.1 by virtue of a sale deed executed by plaintiff no.2 in his favour. The plaintiffs were not having any knowledge about the mistake committed by revenue authorities in resurvey proceedings and they were under the impression that the survey no.131 and entire land to its northern side which is now shown as survey nos.130 and 129 is the land of plaintiff no.2. However survey no.129 is sold to Smt.Puribai Rathod and others and the remaining portion is survey no.131 which is upto survey no.129. The plaintiffs had no knowledge about the mistake committed in resurvey proceedings that the land between survey nos.129 and 131 is given survey no.130 and it is wrongly recorded in the name of Kanhaiyya (father of defendant nos.1 and 3 and husband of defendant no.2). The defendant no.4 is the relative of defendant nos.1 to 3.

4. After the sale deed dated 29.05.2012 of the suit property executed by plaintiff no.2 in favour of plaintiff no.1, he was put in possession of suit property alongwith field bearing survey no.131 and since then he is in its cultivating possession. The sale deed dated 29.05.2012 was executed by plaintiff no.2 in favour of plaintiff no.1

under the impression that the entire land including survey nos.130 and 131 is sold to plaintiff no.1. However, taking undue advantage of the aforesaid mistake committed by the revenue authorities in resurvey proceedings, the defendant nos.1 applied for measurement of suit property and also got it measured in the absence of plaintiffs. In fact he has no right, title or interest in the suit property and it is in exclusive cultivating possession of plaintiffs since long. The plaintiffs have no knowledge about the aforesaid mistake of revenue authorities in resurvey proceedings and they came to know about it on 27.04.2015 when the revenue record was seen by them. On 17.06.2015 the defendant nos.1, 2 and 4 trespassed in the suit property and threatened the plaintiff no.1 and his wife saying that they are the owners of suit property. The plaintiff no.1 has completed his sowing operation on the suit property and there is every likelihood that the defendants may trespass and damage the suit property again, hence it is necessary to restrain them. Hence, the plaintiff has filed this application for grant of temporary injunction against defendants and prayed that they be restrained from disturbing peaceful possession of plaintiffs over the suit property, till the disposal of this suit.

5. The defendant nos.1 and 2 have filed their reply to the instant application vide Exh.22. They have denied that the plaintiffs are in possession of the suit property. Though they have admitted that during resurvey proceedings many mistakes were committed, they have denied that suit property came to be wrongly recorded in the name of father of defendant no.1 namely Kanhaiyya Basole. They

have further denied the execution of alleged sale deed of the suit property by plaintiff no.2 in favour of plaintiff no.1. Eventually, they prayed to reject the application with heavy costs.

6. In the backdrop of the rival pleadings and the documents placed on record, I heard the learned advocates for both the sides.

7. Having perused the application and the relevant documents placed on record, following points arise for my determination and I have recorded my findings against the same for the reasons mentioned as under :-

SN	Points	Findings
1	Do the plaintiffs prove that they have prima facie case in their favour ?	No
2	Do the plaintiffs prove that balance of convenience lies in their favour ?	No
3	Do the plaintiffs prove that they would suffer irreparable loss if temporary injunction is not granted in their favour ?	No
4	What order ?	Application is rejected.

REASONS

AS TO POINT NOS.1 & 2:

8. All the points being interlinked with each other, I proceed to discuss them together.

It is the contention of plaintiffs that the suit property is in their cultivating possession and defendants are interfering with it. On

the other hand, it is the defence of defendants that the suit property is in their cultivating possession and plaintiffs are interfering with it. In support of their contentions, the plaintiffs have filed on record the affidavits of one Shamu Mahadeo Kelwade and Jagan Gopichandji Dadure, who are alleged to be the owners of fields adjoining to the suit property, to the effect that plaintiffs are in cultivating possession of suit property. Though the aforesaid Shamu Mahadeo Kelwade and Jagan Gopichandji Dadure have claimed that their fields are adjacent to the suit property, they failed to give the description of their respective fields to ascertain as to whether they are really the neighbours of the suit property. Hence, no reliance can be placed on the aforesaid affidavits to reach to any prima facie conclusion. In such circumstances, the other documents filed on record are necessary to be looked into.

9. Vide list of documents Exh.4, the plaintiffs have filed on record certain documents. One such document is the 7/12 extract of the suit property for the year 2014-15. Its bare perusal goes to show that defendants are owners of the suit property and it is in their cultivating possession. There is nothing on record which prima facie would suggest that the suit property is in cultivating possession of plaintiffs. On the contrary, the copies of revenue document filed on record by the plaintiffs itself prima facie suggests that the suit property is in possession of defendants. Apart from this, revenue documents have presumptive value under section 156 of the Maharashtra Land Revenue Code. Further, it is the contention of plaintiffs that they on 29.05.2012 sale of the suit property came to be

executed by plaintiff no.2 in favour of plaintiff no.1, he was put in possession of suit property alongwith field bearing survey no.131 and since then he is in its cultivating possession. In order to boost his contentions, he has also filed on record the copy of alleged sale deed. Its bare perusal goes to show that it is only in respect of survey no.131 and there is no whisper of suit property bearing survey no.130 in it, as alleged by the plaintiffs. Thus the documents filed by the plaintiffs in support of their case are rather useful to the case of defendants. Therefore the plea of plaintiffs that they are in cultivating possession of the suit property and defendants are trying to interfere with their possession, prima facie do not appear probable.

10. Apart from this, it is the contention of plaintiffs that the suit property came to the plaintiff no.1 by virtue of a sale deed dated 29.05.2012 executed by plaintiff no.2 in his favour. However, during resurvey proceedings in 1989-90 many mistakes were committed due to which suit property came to be wrongly recorded in the name of father of defendant no.1 namely Kanhaiyya Basole and after his death, the names of defendant nos.1 to 3 came to be mutated in the revenue record of suit property. Further, according to plaintiffs, they have no knowledge about the aforesaid mistake of revenue authorities in resurvey proceedings and they came to know about it on 27.04.2015 when the revenue record was seen by them. But they did not file any document on record to show they are aggrieved by the mistake of the Survey Officer committed during the course of resurvey proceedings. If it is the case of plaintiffs, on 27.04.2015 they came to know about the mistake committed in resurvey proceedings, then they ought to

have filed any document after 27.04.2015 to show that they have initiated any proceeding before the higher authorities to delete the name of defendants from the revenue record of suit property and to regain their right, title and interest in it.

11. Further, the plaintiffs have contended that on 17.06.2015 the defendant nos.1, 2 and 4 had trespassed in the suit property and threatened the plaintiff no.1 and his wife saying that they are the owners of suit property. If it is the case of plaintiffs that they were threatened by the defendants, then were supposed to have lodged police report for penalizing the defendants. However, no police report from the side of plaintiffs is forthcoming on record. This conduct of plaintiffs lead me to prima facie draw adverse inference against plaintiffs that they have no right, title and interest in the suit property. Therefore, the plaintiffs have prima facie failed to prove that they are owner of the suit property and that it is in their cultivating possession. They have also failed to prove that balance of convenience lies in their favour. I, therefore, record my findings as against point nos.1 and 2 in the negative.

AS TO POINT NO.3:

12. I have recorded my findings as against point nos.1 and 2 to the effect that plaintiffs have prima facie failed to prove that they are owner of the suit property and it is in their cultivating possession. Hence, no irreparable loss would cause to plaintiffs, if the temporary injunction is not granted in their favour. On the contrary, irreparable loss would cause to the defendants if they are restrained from

entering into the suit property. I, therefore, record my findings as against point no.3 in the negative.

Thus in view of the discussions noted above, I have come to the conclusion that the plaintiffs have failed to satisfy the triple test for getting the interim relief of temporary injunction i.e prima facie case, balance of convenience and suffering of irreparable loss. In such circumstances, I am of the considered view that the interlocutory application filed by the plaintiffs deserves to be rejected.

In the backdrop of the discussion noted above, I proceed to pass the following order-

ORDER

1. The application Exh.5 is hereby rejected.
2. Costs in cause.

Parseoni.
Date:-04.01.2018.

(S.D.Wankhede)
Civil Judge, Jr.Dn., Parseoni.

CERTIFICATE

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

Name of Stenographer-Abhijit Yeshwant Kulkarni