

MHNG160001762015



ORDER (BELOW EXH.99)
(Passed on 04.04.2024)

1. Plaintiff No.1 has filed the present application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure praying for grant of temporary injunction for restraining defendants No. 4 and 5 from alienating the suit property to any person till the decision of the present suit.

2. Ld. Advocate for plaintiff No.1 submitted that the plaintiffs had filed the present suit for declaration, permanent and mandatory injunction and for damages. Plaintiff No.1 had purchased S.No.384/4 (current S.No. 384/1/A) ad-measuring 0.93 HR on 06.08.2010 vide a registered sale deed from plaintiffs No. 2 to 4. Plaintiff No.1 was in cultivating possession of the said property since then till 18.04.2019. The said survey number was originally part of S.No.318/6 ad-measuring 1.69 HR situated at Mouda, Tah. Mouda, District Nagpur. The said property was received by one Shrawan Jangluji Dhanjode in family partition between him and his brother Balchand Dhanjode. Balchand Dhanjode was the father of defendants No. 2 and 3. On 13.07.1984 Shrawan Dhanjode sold 1.69 HR land of S.No.318/6 to the father of plaintiffs No. 2 to 4 and it came to be renumbered as S.No.382/2 in the re-settlement.

3. He further submitted that on 18.04.2019, defendants No. 2 and 3 wrongfully dispossessed plaintiff No.1 from the suit property and they were in the wrongful possession of the suit property since then. In the month of October 2020, plaintiff No.1 came to know that defendants No. 2 and 3 had sold the suit property to defendants No. 4 and 5 through their power of attorney (defendant No.6) and also delivered the physical possession of the suit property to them. Defendants No. 4 and 5 were in the physical possession of the suit property presently. The transfer of the suit property during the pendency of the present suit was void and not binding on plaintiff No.1.

4. He further submitted that recently, plaintiff No.1 visited the suit property and found that defendants No. 4 and 5 were preparing a layout and they had demarcated plots in the suit property. They were intending to sell the said plots to different persons. Therefore, it was essential to restrain defendants No. 4 and 5 from selling out the plots demarcated over the suit property to different persons. If defendants No. 4 and 5 were not restrained by way of temporary injunction, the plaintiff No.1 would suffer irreparable loss which could not be compensated in terms of money. Plaintiff No.1 had prima facie case in his favour. Hence, he prayed that temporary injunction be granted against defendants No. 4 and 5 and they be restrained from making any construction over the suit property and also from creating third party interest in the suit property during the pendency of the present suit.

5. The defendants failed to file reply to the present application despite sufficient opportunity. Hence, the application is being decided without the say of the defendants.

6. Perused the application. Heard learned advocate for the plaintiffs. On perusal of the submissions of learned advocate for the plaintiffs, following points arise for my determination and my findings along with reasons thereon are as follows:

S. No.	Points for determination	Findings
1.	Whether plaintiff No.1 has prima facie case in their favour?	Yes
2.	Whether the balance of convenience lies in favour of plaintiff No.1 ?	Yes
3.	Whether plaintiff No.1 will suffer irreparable loss if temporary injunction is not granted?	Yes
4.	What order?	As per final finding

REASONS

AS TO POINTS NO. 1 TO 3 :-

7. It is the case of plaintiff No.1 that he purchased 0.93 HR of land bearing S.No. 384/4 from plaintiffs No. 2 and 3 vide a registered sale deed dated 06.08.2010. It is further the case of plaintiff No.1 that initially the said land was comprised in S.No.318/6 and belonged to one Shrawan Dhanjode. Shrawan Dhanjode owned 1.69 HR land of S.No. 318/6. Out of the said land, he sold 1.29 HR land to plaintiffs No.2 and 3. Subsequent to the said transaction S.No. 318/6 was converted into S.No.382/2. Out of the said 1.29 HR land, plaintiffs No.

2 and 3 sold 0.93 HR land to plaintiff No.1. It is the case of plaintiff No.1 that the said 0.93 HR of land came to be renumbered as S.No.384/4 in the resurvey. It is further the case of plaintiff No.1 that presently S.No.384/4 has been again renumbered as 384/1/A. However, perusal of the record reveals that there is not even a single document filed by plaintiff No.1 to show that 0.93 HR land out of S.No. 382/2 was renumbered as S.No.384/4. Plaintiff No.1 has not filed any document to prove the changes in the numbers of the agricultural lands.

8. On perusal of the record, it further appears that the temporary injunction applications filed by plaintiff No.1 previously have been rejected on the ground that he failed to prima facie prove that the land in his possession was S.No.384/4 and that the same was owned by him. It is further observed by my learned predecessor in the order passed below Exh.5 on 01.09.2015 that there was serious dispute about the identity of 0.93 HR land transferred to plaintiff No.1 by plaintiffs No. 2 to 4. Perusal of the copy of the sale deed dated 06.08.2010 reveals that the said sale deed was executed in respect of S.No. 384/4. Therefore, though the location of the property is disputed, the fact that plaintiff No.1 had purchased 0.93 HR of land from plaintiffs No. 2 and 3 is not disputed. The fact as to whether the said land is comprised in S.No. 384/4 or any other survey number is to be decided upon the conclusion of trial.

9. Therefore, plaintiff No.1 has prima facie case in his favour as regards purchase of 0.93 HR of land from plaintiffs No. 2 and 3 is

concerned. Therefore, in order to avoid multiplicity of proceedings, it is necessary to ensure that the suit property is not further alienated until the conclusion of trial. Unnecessary hardship would be caused to plaintiff No.1 in the execution of decree if upon the conclusion of trial, it is found that the property in the possession of defendants No. 4 and 5 actually belonged to plaintiff No.1. Therefore, balance of convenience lies in favour of plaintiff No.1 and he would suffer irreparable loss if the defendants are not restrained from further alienating the suit property until the conclusion of trial. Accordingly, I answer points No. 1 to 3 in the affirmative.

AS TO POINT NO.4 -

10. In view of my findings in respect to points no. 1 to 3, plaintiff No.1 is entitled to the interim relief in the form of temporary injunction against defendants No. 4 and 5. Accordingly, I pass the following order:

O R D E R

- 1] The application is allowed.
- 2] Defendants No. 4 and 5 are hereby restrained from creating third party interest in the suit property i.e. S.No. 384/1/A ad-measuring 0.93 HR, as well as from making any construction over it during the pendency of the present suit.

(Order dictated and pronounced in open Court.)

Date : 04.04.2024

(A.B.Kadian)
Civil Judge Junior Division,
Mouda.