

R.C.S.No. 38/2020**Dhondiram Punjaram Pawar & Anr.****V/s.****Durgabai Vasant Shirpe & Ors.****Common Order Below Exhibit 5 & Exhibit 26**

The present application (Exh. 5) is filed by the plaintiffs seeking temporary injunction under order XXXIX Rule 1 of Code of Civil Procedure restraining the defendants from obstructing their peaceful possession over the suit land and from creating any third party interest on the suit land till final disposal of the suit. Application (Exh. 26) is filed by the defendants seeking temporary injunction under order XXXIX Rule 1 of Code of Civil Procedure restraining the plaintiffs from obstructing their peaceful possession over the suit land till final disposal of the suit. Both the applications are temporary injunction applications in respect of the suit land hence, they are decided together.

2. The plaintiffs contend that 0 H 20 R area out of Gat no. 178/1 totally admeasuring about 1 hector 31 R. situated at Tal.-Deola, Dist.-Nashik (hereinafter referred to as "the suit land") is subject matter of the present suit. The present suit is filed seeking specific performance, declaration and perpetual injunction in respect of the suit land. The plaintiffs are father and son respectively. On 12/3/2008, mother of defendant No. 1 Smt. Yashodabai Tukaram Kasar alienated the suit land to the plaintiffs for consideration of Rs. 1,20,000/-. Accordingly on the same day money receipt was executed in the presence of witnesses. From the date of execution of the receipt, the suit land is in possession of the plaintiffs.

The plaintiffs are in possession of the suit land as owners for more than 12 years openly without any interruption. However, Yashodabai Tukaram Kasar could not execute sale-deed in respect of the suit land in favour of plaintiff No. 1. After demise of Yashodabai Tukaram Kasar, name of her daughter i.e. defendant No. 1 was entered into the record of rights of the suit land. Defendant No. 1 avoided execution of sale-deed under various pretexts. On 21/7/2020, the defendants attempted to disturb settled possession of the plaintiffs by disturbing cultivation of the suit land. Hence, the plaintiffs prayed that the defendants be restrained from causing obstruction to the peaceful possession of the plaintiffs over the suit land and from creating any third party interest on the suit land till final disposal of the present suit.

3. The defendants appeared and resisted the claim of the plaintiffs vide their W.S./say and also filed their counter-claim at Exh. 24. They contended that the suit land is ancestral land of defendant No. 1 and the defendants are in possession of the suit land. Yashodabai Tukaram Kasar never alienated the suit land to the plaintiffs. The plaintiffs are not in possession of the suit land. Defendant No. 1 had alienated 0 H 56 R + 0 H 4 R area out of total area of 1 H 31 R of Gat No. 178/2 to wife of plaintiff No. 1 by way of registered sale-deed dated 20/6/2000. Apart from the said transaction the defendants/counter-claimants or Yashodabai Tukaram Kasar have never made any sale transaction in favour of the plaintiffs. In July-2020 the plaintiffs started claiming ownership over the suit land. The plaintiffs started causing obstruction to the peaceful possession of the defendants over the suit land. Hence, the defendants/counter-claimants prayed that the present application be rejected. The defendants/counter-claimants also filed interim injunction application at Exh. 26 and prayed

that the plaintiffs be restrained from causing obstruction to the their peaceful possession over the suit land till final disposal of the suit.

4. Ld. Adv. For the plaintiffs Shri. P.B. Lokhande argued that mother of defendant No. 1 Yashodabai Tukaram Kasar sold the suit land to the plaintiffs. Yashodabai accepted entire consideration amount in respect of the suit land. Said receipt is filed on records by the plaintiffs. Intentions of the parties can be gathered from the said receipt. It has been signed by husband of defendant No. 1. As per Indian Contract Act oral agreement of sale is valid. The plaintiffs are in possession of the suit land since the year 2008. House of the plaintiffs is standing on the suit land. The plaintiffs have filed on record assessment extract and tax receipt of the said house. The plaintiffs have filed on record affidavit of independent witnesses on record to show that they are in possession of the suit land. Reliefs under Order 39 Rule 1 (b) and (c) can be claimed only by the plaintiff. Hence, the defendant is not entitled for the relief claimed by him by way of application Exh. 26. Hence, he prayed that application Exh. 5 be allowed and application Exh. 26 be rejected.

5. Per contra Ld. Adv. for the defendants/counter-claimants Shri. G.K.Jadhav argued that payment receipt filed by the plaintiffs is not registered. It does not bear signature of the owner. The said receipt does not mention the area of the suit land along with its fore boundaries. Thus the said receipt is not executed as per the provisions of Registration Act and Stamp Act. As per the contentions of the plaintiffs, the said receipt was executed in the year 2008. As per the provisions of Indian Limitation Act, suit for specific performance has to be filed within three years. Hence, the suit is not filed within limitation. The plaintiffs are claiming possession over

the suit land based on the agreement to sale. Hence on one hand, the plaintiffs are claiming permissive possession. However, on the other hand the plaintiffs have made alternative prayer regarding declaration that the plaintiffs have become owner of the suit land by way of adverse possession. Thus, the plaintiffs cannot claim such alternative prayers. The plaintiffs have not filed on record possession receipt in respect of the suit land. Assessment extract of house of the plaintiffs mentions that the house is erected on the encroached land. Thus, from the said extract it appears that the plaintiffs have erected their house by encroaching government land. The suit land is in danger of being vested by the defendants. Hence, the defendants have right to file interim application under Order 39 Rule 1 (a). Hence, he prayed that application Exh. 5 be rejected and application Exh. 26 be allowed.

6. Perused the application, say and other documents on record. Heard ld. Adv. for the plaintiffs and ld. Adv. for defendants/counter-claimants. On the perusal of the application, say and other documents on record, following points arose for my determination, its findings with reasons thereof are as under:

Sr. No.	Points	Findings
1	Who proves the prima-facie case?	The defendants
2	In whose favour balance of convenience lies?	In favour of the defendants
3	To whome irreparable loss will be caused if injunction is not granted as prayed?	To the defendants
4	What order?	As per final order

REASONS

As to point no. 1

7. In support of their application, the plaintiffs have filed on record certified copy of 7x12 extract of the suit land, certified copy of 7x12 extract of Gat No. 178/2, copy of death certificate of Yashodabai Kasar, certified copy of mutation entry No. 175, certified copy of mutation entry No. 187, certified copy of mutation entry No. 318, certified copy of mutation entry No. 555, copy of village form 8-a abstract of house No. 383, copy of receipt of home tax receipt, copy of suit receipt, photographs of house No. 383, copy of sale-deed dated 20/6/2000, copy of F.I.R. dated 21.7.2020, copy of village map, affidavit of witness Shivaji Andu Shinde at Exh. 23. As against this defendants/counter-claimants have filed on record certified copy of 7x12 extract of the suit land, certified copy of 7x12 extract of Gat No. 178/2 and copy of N.C. dated 14/7/2020.

8. It is contention of the plaintiffs that late Yashodabai Kasar i.e. mother of defendant no. 1 alienated the suit land in their favour. They paid total consideration amount of Rs. 1,20,000 to Yashodabai. Accordingly receipt dated 12-03-2008 was executed. Since 12-03-2008, they are in possession of the suit land. The plaintiffs have filed on record copy of receipt dated 12-03-2008 to support their contention. I perused the said receipt. It mentions that sale transaction 0 H 20 R area out of Gat no. 178/1 totally admeasuring about 1 hector 31 R. is completed between Yashodabai Tukaram Kasar and Dhondiram Punjaram Pawar for consideration of Rs. 1,20,000/-. The amount is received on 12-03-2008. Date of sale is decided as 5-04-2008. The receipt has been signed by the witnesses. However, perusal of the receipt shows that there is no signature of Yashodabai Kasar

and plaintiff no. 1 Dhondiram Punjaram Pawar on the said receipt. Hence prima-facie it cannot be said that the receipt was duly executed. Moreover, the said receipt does not mention that possession of the suit land is handed over to the plaintiff. Sale-deed dated 20-06-2000 filed by the plaintiffs is in respect of Gat no. 178/2 and not in respect of the suit land.

9. I also perused the 7/12 extract of the suit land. The said extract bears name of defendant no. 1 in its holders column and not name of the plaintiff. The plaintiff has also contended that his house is erected on the suit land. He has filed on record assessment extract of the said house. The said assessment extract mentions that the house is erected on the encroached land. It does not mention that the said house is erected on the suit land. Hence prima-facie the plaintiffs have failed to prove their contention that they are in possession of the suit land. On the other hand 7/12 extract of the suit land is in the name of defendant no. 1. As per mutation entry no. 444 dated 17-09-2013, name of defendant no.1 Durgabai Shirpe was mutated in record of rights of the suit land. It is not contended by the plaintiffs that the said mutation entry has been challenged or cancelled. Hence prima-facie defendant no. 1 appears to be in possession of the suit land. Therefore the defendants have proved prima-facie case. Hence I answer point no. 1 in favour of the defendants.

As to point no. 2 and 3

10. As already discussed, the defendants have proved prima-facie case. Hence, if the injunction is not granted as prayed, the defendants will suffer irreparable loss. If injunction is not granted in favour of the defendants, the plaintiffs will continue to disturb their peaceful possession

over the suit land. Hence, if injunction is not granted in favour of the defendants, the defendants will suffer greater hardship. Therefore, balance of convenience lies in favour of the defendants. As already discussed, irreparable loss would be caused to the defendants, if injunction is not granted as prayed. Hence I answer point no. 2 and 3 in favour of the defendants.

Considering all the above grounds, I pass the following order :

O R D E R

1. The application (Exh. 5) is rejected.
2. The application (Exh. 26) is allowed.
3. The plaintiffs, their agents, assignees, servants and legal representatives are hereby temporarily restrained from causing obstruction to the peaceful possession of the defendants over the suit land till final disposal of the present suit.
4. Costs in cause.

(Dictated and pronounced in open court)

Sd/-

Place : Kalwan
Date : 14.12.2021

(A. C. Joshi)
Jt. Civil Judge, J.D., Kalwan