

ORDER BELOW EXH.05

R.C.S. No. 140/2022.

(Passed on : 21.11.2022)

1. Plaintiff has filed this application restraining the defendant from making obstruction to her possession and making obstruction to the construction and the measurement of the suit property till the decision of the suit.
2. It is the contention of the plaintiff that the southern side 24.65 sq. meter, out of C.T.S. No.2774 situated within the Nagarparishad area of city Yeola, Tal. Yeola, Dist. Nashik, is purchased by the plaintiff from Dhyaneshwar Bhagusa and Ganesh Bhagusa Nakod by way of registered sale-deed on 13.08.2020 and which is the suit property in the present suit. There is a house property of the plaintiff in C.T.S. No.2775 to the southern side of the suit property. The name of the plaintiff is also mutated to the suit property. C.T.S. No.2775 was also purchased by the plaintiff Dhyaneshwar Bhagusa and Ganesh Bhagusa Nakod by way of registered sale-deed on 17.02.2020.
3. The plaintiff is residing in the house situated in C.T.S. No.2775. The plaintiff wanted to make construction in the suit property. For that purpose, she has filed an application before the T.I.L.R. for measurement of the suit property and deposited the requisite fee. But the defendant has obstructed to the measurement. Due to the said obstruction, the plaintiff could not start her construction work. To the northern side of the suit property, there is open space of defendant. In the said property defendant has constructed the wall running east-west direction.
4. The defendant has no right to obstruct to the construction of the plaintiff. On 07.07.2022, the defendant obstructed to the labours of the plaintiff working in the suit property. Plaintiff is ladies and her husband is out

of station for his business purpose and the defendant is taking disadvantage of this fact. The plaintiff is the owner and possessor of the suit property. Her name is also mutated to the suit property. The plaintiff wanted to make construction on the suit property. The house property of the plaintiff is not enough for her residence. Due to objection of the defendant, the work of measurement cannot be carried out and hence, the plaintiff has filed this application.

5. The defendant has filed his say below Exh.15 and denied the contents of the application. It is his contention that by suppressing the material facts, the plaintiff has filed this suit. No cause of action occurred for filing the suit. Further, he has denied the incident occurred on 07.07.2022 as mentioned in the application. He has denied the description of the suit property. The map mentioned in the application is also denied by him.

6. He has denied that the plaintiff has purchased the suit property on 13.08.2020. Further, he has denied that the plaintiff has purchased C.T.S. No.2775. Further, he has denied that the defendant has obstructed to the measurement work.

7. It is the contention of the defendant that the suit property which is used for easementary right and the suit property was used only for the purpose of easement. The suit property was purchased by Pawansa Rajivsa Kokane and Bhagusa Kisansa Nakod by way of sale-deed No.735/1994. The suit property came to the defendant as the legal heirs. Accordingly, their name is also mutated. It is mentioned in the sale-deed that the properties are for easementary right and hence, the suit property is only for the use of easementary right. In such situation, plaintiff cannot make construction or measure the suit property.

8. Further, the plaintiff has not filed the sale-deed of the suit property dated 13.08.2020. The suit property was purchased vide sale-deed No. 3001/2020. The said sale-deed shows that the undivided $\frac{1}{2}$ area i.e. 24.65 sq. meter was sold out of C.T.S. No. 2774. But the boundaries are not mentioned. Hence, it is unclear that exactly how much area was purchased. The plaint also does not contain the fact of sale-deed and number of the sale-deed.

9. The father of the defendant namely Pawansa Rajusa Kokane and Bhagusa Kisansa Nakod have purchased C.T.S. No.2774 by way of the sale-deed No.735/1994. The said property was not partitioned between Pawansa and Bhagusa and hence, plaintiff is not entitled to purchase the suit property. So also, Dnyaneshwar Bhagusa Nakod and Ganesh Bhagusa Nakod have also no right to sell the suit property to the plaintiff.

10. On 20.02.2020, the plaintiff has purchased the property No.2775 from Dnyaneshwar Nakod and Ganesh Nakod by way of registered deed No.563/2020. The ad-measuring area in the said sale-deed is mentioned as 87.00 sq. meter. The said sale-deed contains the provision of right of way given to the plaintiff. Further, the other owners of the property are also having right of way which is available to the plaintiff.

11. The plaintiff is not concerned with the ad-measuring area which is in possession of the defendant. The plaintiff has tried to claim right of way from the area which is in possession of the defendant and hence, the defendants have filed police complaint in Yeola City Police Station against the plaintiff. Further, the plaintiff is not residing in C.T.S. No.2775. They are residing elsewhere. The sale-deed of the plaintiff is not binding on the defendant. No boundaries are mentioned in the sale-deed of the plaintiff. Further, the plaintiff has not taken the permission of construction from Nagar Parishad

Yeola. Thus, he has prayed for rejection of the application.

12. Considering the contents of the application, following points arise for my determination, to which I have recorded my findings for the reasons stated below:-

SR. NOS.	POINTS.	FINDINGS.
1.	Whether plaintiff is having <i>prima-facie</i> case ?	“Negative”.
2.	Whether balance of convenience lies in favor of plaintiff?	“Redundant”.
3.	Whether plaintiff will suffer irreparable loss if injunction is not granted ?	“Redundant”.
4.	What order?	As per final order.

REASONS

As to Point No.1:-

13. It is the contention of the plaintiff that he has purchased the suit property from Dnyaneshwar Nakod and Ganesh Nakod. In order to substantiate his contention, the plaintiff has filed the sale-deed dtd. 13.08.2020. I have gone through it. It shows that the plaintiff has purchased 24.65 sq. meter area out of 49.3 sq. meter of C.T.S. No.2774 i.e. ½ portion of total ad-measuring area of C.T.S. No.2774.

14. It is the contention of the defendant that on 08.04.1994, Pawansa Rajusa Kokane and Bhagusa Nakod have purchased C.T.S. No. 2774 ad-measuring 49-3 sq. meter. In order to substantiate his contention the defendant has filed the sale-deed dtd. 08.04.1994. I have gone through it. It shows that Pawansa Rajusa Kokane and Bhagusa Nakod have purchased C.T.S. No. 2774 ad-measuring 49-3 sq. meter. Further, it is the contention of

defendant that Pawansa Bhagusa Kokne is his father. The sale-deed dtd. 08.04.1994 shows that the total C.T.S. No.2774 was owned by Pawansa Kokane and Bhagusa Nakod.

15. The sale-deed of the plaintiff shows that the plaintiff has purchased half portion of C.T.S. No.2774 from Dnyaneshwar Bhagusa Nakod and Ganesh Bhagusa Nakod. But the C.T.S. No.2774 was purchased by Pawansa Kokane and Bhagusa Nakod. Pawansa is the father of the defendant and Bhagusa Nakod is the father of Dnyaneshwar Nakod and Ganesh Nakod who have sold half of portion of C.T.S. No2774 to the plaintiff.

16. The sale-deed dtd. 08.04.1994 shows that the total C.T.S. No.2774 was purchased by Pawansa Kokane and Bhagusa Nakod, whereas, the sale-deed dtd. 13.08.2020 shows that the plaintiff has purchased half portion of C.T.S. No.2774 from Dnyaneshwar Nakod and Ganesh Nakod who are the children of Bhagusa Nakod. In the sale-deed of the plaintiff dtd. 13.08.2020, it is mentioned that the property which is sold is the undivided property. Further, it does not contain which side of half portion out of C.T.S. No.2774. Further, it is does not contain the boundaries of $\frac{1}{2}$ portion of C.T.S. No.2774.

17. The sale-deed dtd. 08.04.1994 shows that the total C.T.S. No.2774 was jointly owned by Pawansa Nakod and Bhagusa Nakod. As it was jointly owned by them and no partition was taken place between them, the both are having common possession over C.T.S. No.2774. The plaintiff has purchased $\frac{1}{2}$ undivided portion out of C.T.S. No.2774 and the exact location of $\frac{1}{2}$ undivided portion is not mentioned in the sale-deed. In such situation, unless, the partition took place between Pawansa and Bhagusa, or their legal heirs i.e. between the defendant and Dnyaneshwar and Ganesh, the plaintiff cannot claim ownership over a particular $\frac{1}{2}$ portion. Unless the share of Bhausa was

crystallized, the plaintiff cannot get the exact location of property which he has purchased.

18. The plaintiff has prayed injunction against the defendant restraining them from measuring the suit property and from making construction over it. The exact location of the area purchased by the plaintiff is not fixed. Hence, in such situation, plaintiff cannot ask from restraining the defendant from making construction and restraining the defendant from making measurement. Because earlier the father of the defendant and now the present defendant is having undivided ½ share in C.T.S. No.2774. Hence, I answer point No.1 in the “negative”.

As to point Nos.2 and 3:-

19. In view of the discussion made above and finding given to point No.1 above, point Nos.2 and 3 became redundant and hence, answered accordingly.

As to point No.4:-

20. In view of discussion made above and findings given for point Nos.1 to 3 above, in answer to point No.4, I pass the following order:-

O R D E R

1. The application at Exh.5 is rejected.

Order dictated and pronounced in open Court.

Place : Yeola.
Date : 21.11.2022.

(M. S. Ligade)
Civil Judge, Junior Division
Yeola, Dist. Nashik.

CERTIFICATE

I affirm that the contents of this PDF file Order / judgment are same, word to word, as per the original order / judgment.

Name of Stenographer : P. A. Bargal (L.G. Stenographer)
Name of the Court : Shri. M. S. Ligade, C.J.J.D.,
Yeola, Dist. Nashik.
Date of Order / judgment : 21.11.2022.
Order / judgment signed by
Presiding officer on : 21.11.2022.
Order/judgment uploaded on : 21.11.2022.