

ORDER BELOW EXH.05.**R.C.S. No. 322/2023.**

(Passed on : 06.09.2024)

1. The plaintiffs have filed this application restraining the defendants from alienating the suit property and disturbing their possession over the suit property, till the decision of the suit.
2. It is the contention of the plaintiffs that northern side 1 H. out of the land Gat No. 55/1, situated at Paregaon, Tal. Yeola, Dist. Nashik is purchased by the defendant Nos.1 and 2 and southern side 1 H. out of Gat No.55/1, situated at Paregaon, Tal. Yeola, Dist. Nashik is sold by defendant No.5 to defendant Nos.3 and 4. Both the properties are the suit properties in the present suit.
3. The earlier number of suit properties is 55. The names of earlier owner namely Radhakisan (Ramkisan) Dada Mali and his brother Laxman Dada Mali are in other right column of the 7/12 extract of the Gat No.55 as tenants. Thereafter, Gat No.55 was divided as 55/1 and 55/2. The suit property is the joint family property of the plaintiffs. The suit property is of new tenure condition. Further, it is also mentioned in other right column that prohibited for transfer without permission of competent authority. Further, the suit property comes within the purview of Bhogvatdar Class-I. Further, the suit property belong to Adiwasi Bhill community and hence, u/sec.36(a) of M.L.R.C., the entries also taken on 7/12 extract as new tenure. Thus, the earlier owner of the plaintiff namely of Radhakisan (Ramkisan) Dada Mali and his brother Manoj Laxman Mali(Karta) is mutated as tenant. Radhakisan Mali was illiterate person. He has filed Vahiwat Case No.01/2013 against Yashwantrao Narayanrao Vinchurkar u/sec. 32(g) of B.T.A.L. Act. It was decided on 11.12.2017. The said application was allowed and Radhakisan

Mali was directed to deposit Rs.9928/- in the Treasury. Accordingly, he deposited the said amount. Yashwantrao Vinchurkar have filed Tenancy Appeal No.88/2017 before the S.D.O. against the said order which was rejected on 28.12.2018 and confirmed the order passed in Vahiwat Case No.01/2013. Thus, the earlier owner of the plaintiff Radhakisan was the tenant in the suit property and the suit property was in his possession.

4. After the death of Laxman Mali, the names of his legal heirs were mutated. Thereafter, Radhakisan died on 22.01.2023. After his death, instead of mutating the name of plaintiffs as his legal heirs, the defendant No.5 has got power of attorney of Yashwantrao Narayanrao Vinchurkar. The suit property is the joint Hindu family property of the plaintiffs and came to the plaintiffs by succession.

5. The defendant No.5 has no right to sell the property to defendant Nos.1 to 4. After the death of Radhakisan, suit property is in possession of the plaintiffs as his legal heirs. By taking disadvantage of illiteracy of the plaintiffs, the defendant No.5 has sold the northern side 1 H. out of Gat No.55/1 to defendant Nos.1 and 2 on 02.07.2023 and southern side 1 H. to defendant Nos.3 and 4 on the same date. Both the sale-deeds are false and not binding on the plaintiffs.

6. On 10.07.2023, the plaintiffs came to know about both the sale-deeds. The names of defendant Nos.1 to 4 are mutated to the suit property. It takes too much time to decide the suit. The defendant Nos.1 to 4 are causing obstruction to the plaintiffs after the sale-deed. Hence, the plaintiffs have filed this application.

7. The defendant Nos.1 to 4 have filed their say below Exh.15 and denied the contents of the application. It is their contention that the description of the

property mentioned in the plaint is not correct. They have denied that initially the Gat number of suit property was 55 and name of Radhakisan was mentioned in other right column and the name of Laxman Dada Mali is mentioned as the Karta of the family. Further, they have denied that Gat No.55 was divided into Gat No.55/1 and 55/2. Further, they have denied that the suit property is owned by the joint family of the plaintiff. Further, they have denied that there is entry that property cannot be transferred without the permission of competent authority. Further, they have denied that the suit property comes under the provisions of 36(a) of MLRC.

8. Further, they have denied that Radhakisan alias Ramkisan was illiterate person. Further, they have denied that the Vahiwat Case No.01/2013 was decided against Sardar, Yashwantrao Narayanrao Vinchurkar and said proceeding was decided on 11.12.2017. Further, they have denied that it was directed by Tahsildar that the amount of the land Rs.9928/- is to be deposited after appeal period is over and accordingly, the Radhakisan has deposited the said amount. Further, they have denied that Sardar Yashwantrao Narayan Vinchurkar has filed Tenancy Appeal No.88/2017 before S.D.O. which was dismissed on 28.12.2018. Further, they have denied that Radhakisan was the possessor of the suit property.

9. It is their contention that defendant No.5 got the knowledge that the defendant Nos.1 to 4 wanted to purchase the property. Thereafter, the defendant No.5 has shown the documents of the suit property to defendant Nos.1 to 4. They have verified the documents. Thereafter, the transaction of sale was agreed. Thereafter, the defendant Nos.1 to 4 have purchased the suit property and the defendant No.5 has handed over the possession of the suit property to them. Since then, the defendant Nos.1 to 4 are in possession of the suit property.

10. Thereafter, as per the sale-deed, names of defendant Nos.1 to 4 mutated to the revenue record. Plaintiffs are not in possession of the suit property. The defendants are the owner and hence, injunction cannot be granted against them. Thus, they have prayed for rejection of the application.

11. Considering the rival contention of both the parties, following points arise for my determination, to which I have recorded my findings for the reasons stated below:-

SR. NOS.	POINTS.	FINDINGS.
1.	Whether plaintiffs are having <i>prima facie</i> case ?	Affirmative.
2.	Whether balance of convenience lies in favor of plaintiffs ?	Affirmative.
3.	Whether plaintiffs will suffer irreparable loss, if injunction is not granted ?	Affirmative.
4.	What order?	As per final order.

REASONS

As to Point No. 1:-

12. It is the contention of the plaintiffs that Radhakisan Mali is the tenant in the suit property and his name is also mutated in the other right column of the suit property and they are the legal heirs of Radhakisan alias Ramkisan Mali, but the defendant No.5 has alienated the suit property without their permission to defendant Nos.1 to 4 by way of two sale-deeds.

13. The plaintiffs have filed the 7/12 extract of Gat No.55. I have gone through it. It shows that the name of Radhakisan Dada Mali is mentioned in other right column as the tenant. I have gone through it. In the other right

column it is mentioned that prohibited for transfer without the prior permission of competent authority. Further, the plaintiffs have filed the 7/12 extract of Gat No.55/1. I have gone through it. In the other right column it is mentioned that prohibited for transfer without the prior permission of competent authority u/sec. 36(a) of M.L.R.C.

14. Further, the plaintiffs have filed the sale-deed dated 02.06.2023. It shows that defendant No.5 has sold 1.00 H.R. out of Gat No.55/1 to defendant Nos.1 and 2. Further, the plaintiffs have filed the sale-deed dated 02.06.2023. It shows that defendant No.5 has sold 1.00 H.R. out of Gat No.55/1 to defendant Nos.3 and 4. Further, the plaintiffs have filed the order dated 11.12.2017 in Kul Vahiwat Case No.01/2013 wherein the application of Ramkisan Mali and Laxman Mali u/sec. 32(g) was allowed. Further, the plaintiffs have filed the copy of order in Tenancy Appeal No. 88/2017, wherein the appeal of Yashwant Vinchurkar against Ramkisan Mali and Laxman Mali was rejected.

15. Further, the plaintiffs have filed the copies of aadhar card of plaintiff Nos.1 to 4. The copies of aadhar card of plaintiff Nos.1 and 2 shows that there name is Sumanbai Ramkisan Mali and Shivnath Ramkisan Mali. Thus, the 7/12 extract shows that Ramkisan Mali is one of the tenant of the suit property. The two sale-deeds dated 02.06.2023 shows that the defendant No.5 has sold the suit property to defendant Nos.1 to 4. Both the 7/12 extract contains the entry in other right column that prohibited from transfer without the prior permission from competent authority.

16. The plaintiffs have filed this suit for declaration that the sale-deeds dated 02.06.2023 are not binding on their share and the declaration of their ownership over the suit property. The plaintiffs have prayed in this application for restraining the defendants from alienating the suit property and obstructing

to the possession over the suit property. The 7/12 extract of Gat No.55 shows that Ramkisan Mali is the tenant in the suit property. It is the contention of the plaintiffs that they are legal heirs of Ramkisan Mali and being his legal heirs, they are the possessor of the suit property. Further, in both the sale-deeds it is not mentioned that the necessary permission was acquired from the competent authority. In such situation, if the suit property is alienated non purpose will be served by filing this suit. Hence, I answer point No.1 in the “affirmative”.

As to point Nos.2 and 3 :-

17. The 7/12 extract of the suit property prima facie show that deceased Ramkisan Mali is the tenant in the suit property. Hence, if the injunction is not granted, the plaintiffs will suffer an irreparable loss as they are the possessor of the suit property being prima facie legal heirs of deceased tenant Ramkisan Mali. Whereas, if the injunction is granted, no loss would be caused to the defendants, as the plaintiffs are the possessor of the suit property being prima facie legal heirs of tenant Ramkisan. Hence, the balance of convenience lies in favour of plaintiff. Hence, I answer point Nos.2 and 3 in affirmative as well.

As to point No.4 :-

18. In view of the discussion made above and the findings given for the points Nos.1 to 3, I pass the following order:-

O R D E R

1. The application at Exh.5 is allowed.
2. The defendant Nos.1 to 4 are hereby temporarily restrained from alienating the suit property and obstructing to the possession of the plaintiffs over the suit property, till the decision of the suit.

Dictated and pronounced in open Court.

Place : Yeola.

Date : 06.09.2024.

(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 : 06.09.2024.
Order / judgment signed by
Presiding officer on : 06.09.2024.
Order/judgment uploaded on : 06.09.2024.