



(Order on application for temporary injunction)

ORDER BELOW EXH.5

This is an application under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908. The suit is for declaration and permanent injunction.

02. **Description of suit property :**

Property No.	Ad-measuring area	Village
Gat no. 461(old survey no.61/1)	0H 48 R + 0 H 05 R Kharaba, i.e. 0H 53 R Kharaba out of total area	Nandgaon Sado Tal-Igatpuri, Dist- Nashik.

Aforementioned property is herein after referred as '**suit property**'.

03. **Plaintiff's case in short :**

Plaintiff's grand father purchased suit property in his name by registered sale deed 876/1949. Plaintiff and defendant are real brothers. Defendant is educated person. Defendant by taking disadvantage of plaintiff's simple nature got revenue record of suit property in his name. Government has proposed acquisition of suit property for Samruddhi Highway. On the basis of entry of defendant's name in revenue record of suit property, he will get entire amount of compensation from Government for acquisition of suit property for Samruddhi Highway. This will cause irreparable loss to the plaintiff. Therefore, prayed for temporary injunction to restrain the defendant from alienating or creating third party interest, from creating mutation entry and from obstructing plaintiff's possession in suit property. Accordingly, prayed for allowing the application.

04. **Defence in short :-**

The defendant resisted the contents of the application by filling say at **Exh.14**. It is stated that, the suit is not maintainable for non-joinder of necessary party and being barred by limitation. It is further stated that, defendant is in possession of suit property since 50 to 60 years. The plaintiff has no concern with the suit property. On the basis of old record, plaintiff is claiming ownership and possession over suit property. However, the defendant has constructed house and is cultivating suit property since long. Therefore, if injunction is granted defendant will suffer irreparable loss. Accordingly, prayed for rejection of application.

05. **Argument by Ld. Advocate for the plaintiff :-**

Ld. Advocate for the plaintiff submitted that, prima facie case lies in plaintiff's favour as his ownership and possession over suit property is apparent from sale deed 876/1949. He further submitted that, there is no document to show that entries in defendant's name is backed by possession. He also submitted that, defendant did not receive notice of consolidation scheme. The defendant got his name entered in the revenue record in collusion with the revenue authorities. He also submitted that, the source of defendant's title over suit property is unclear. If injunction is not granted, defendant will take entire compensation amount from the Government and the plaintiff will suffer irreparable loss. Accordingly, prayed for allowing the application.

06. **Argument by Ld. Advocate Shri. B. N. Waje for the defendant :-**

The learned Advocate for the defendant submitted that, plaintiff is not entitled for the equitable relief of injunction. He submitted that, plaintiff has suppressed material facts from the Court and have not approached with clean hand. He further submitted that, at one place plaintiff's stated that, the suit property was purchased by his grand father in his name, where as in the application to concerned authority plaintiff has stated that, suit property was purchased by his grand mother and further contrary recitals

are made in the sale deed. It is stated in the sale deed that, the suit property was purchased by plaintiff's father. Therefore, plaintiff's case is doubtful and he is not entitled for injunction. If it is considered that, plaintiff's father purchased suit property then plaintiff and defendant have equal share over suit property, however, plaintiff has not claimed partition.

07. The affidavit of adjacent owner, letter of concerned authority for acquisition shows that, the defendant is in possession of suit property. Therefore, prima facie case does not lie in plaintiff's favour. No irreparable loss would be caused to the plaintiff's. Accordingly, prayed for rejection of application.

8. On hearing both the sides, following points arise for my determination and I have recorded my findings thereupon as follows:-

Sr.No.	Points for determination	Findings
1	Whether plaintiffs is having prima-facie case ?	No.
2	Whether balance of convenience tilts in favour of plaintiff ?	No.
3	Whether plaintiffs will suffer irreparable loss if injunction is not granted ?	No.
4	Whether the plaintiff is entitled for the relief of temporary injunction as prayed ?	No.
5	What Order ?	Application is rejected.

REASONS

9. It is settled principle of law that while deciding application for temporary injunction, mini trial should not be conducted. Three cardinal principles to be assessed

while deciding this application are prima-facie case, balance of convenience and irreparable loss.

As to point no.1 :-

(Prima-facie Case)

10. To prove prima-facie case, plaintiff has relied upon sale deed 876/1949. Plaintiff has also filed on record 7/12 extract of suit property. It is the contention of the plaintiff that, revenue records of suit property since 1940 shows plaintiff's name in the land holder column. He further submitted that, the mutation entry 9797 has been made by defendant in collusion with revenue authorities. I have carefully considered the document filed by the plaintiff and the defendant on record.

11. Now, it is necessary to ascertain from the averments in the pleadings in plaint and written statement and from the document on record, in whose favour prima facie case lies. It is the contention of plaintiff in the plaint that, suit property has been purchased by his grand father in his name. However, in the application made by plaintiff to District Collector, Nashik taking objection for acquisition of suit property, it is stated that, the suit property was purchased by plaintiff's grand mother in his name. Plaintiff has filed the copy of letter at Exh.3/6. However, on perusal of sale deed 876/1949, it is transpired that, suit property was neither purchased by plaintiff's grand father nor by his grand mother but it was purchased by his father Yesu. Therefore, the theory of purchase of suit property in plaintiff's name at this juncture, prima facie appears to be doubtful.

12. It is the contention of the plaintiff that, merely defendant's name are entered in the revenue record and he is not in physical possession of suit property. However, on perusal of 7/12 of suit property of the year 2014 onwards filed by plaintiff Exh.3/1 shows name of defendant in land holder column and shows name of Nandgaon Sado, co-operative society in other right column. It appears from 7/12 extract of suit property that Nandgaon Sado Cooperative Bank has created charge over suit property. It

is also important to note that, plaintiff has not objected to the loan granted by concerned co-operative society to the defendant. Defendant has filed 7/12 extract of suit property from the year 1979 to 2017. The revenue entries in the land holders column since 1979 is in the name of the defendant.

13. The tax receipt and house property extract filed by defendant along with list **Exh.17** also prima facie shows that, defendant's son Ramesh has paid tax of house property 682, which is located in the suit property. The house property extract shows that, house admeasuring 45 x 25 feet is constructed in gat no.461 and is in possession of Ramesh Deoram Adole. The Mutation entry extract of ME no.9797 filed by both parties shows that, the plaintiff has made application to the revenue authority for deleting of his name and insertion of defendant's name in suit property.

14. Defendant has filed on record copy of letter dated 26.06.2019, wherein it is stated that, defendant is in possession of gat no.461 and has cattle shed in it. It also further states that, defendant has taken time of 8 days to remove the construction in gat no.461. This shows that, defendant is in possession of suit property. If at all plaintiff would have been in possession of suit property, then, concerned authority during the inquiry for acquisition would have found plaintiff in possession of suit property. However, there is nothing on record to prima facie show that, plaintiff is in possession of suit property.

15. It is contended by plaintiff that, entries in revenue record does not confer title of the defendant. To substantiate this contention, plaintiff has relied upon Judgment of Hon'ble Supreme Court in **Smt. Bhimabai Mahadeo Kambekar (D) through LR Vs. Arthur Import and Export Company & others (Civil Appeal No.1330 of 2019) decided on 31-01-2019**, and **Sawarni Vs. Inder Caur 1996 C.J.(SC) 1518**, wherein it is held that, **"This court has consistently held that mutation of a land in the revenue records**

does not create or extinguish the title over such land nor it has any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question". With great respect to the cited judgments, the facts in present case are different, as there are long standing entries in record of right in the name of the defendant and mutation entry 9797, which raises presumption of truth under section 157 of the Maharashtra Land Revenue Code.

16. Learned Advocate further relied upon Judgment of Hon'ble Bombay High Court in *Sanjay Shrikishanji Somani Vs. Vishnupant Shankarrao Sahane 2007(6) Mh.LJ 550*, wherein it is held that, "*The party to suit may file various documents for consideration of prayer of temporary injunction under order 39 Rule 1 and 2 of the CPC. The court at the first instance, is required to consider such prayer in view of the provisions laid down under Order 39 Rule 1 and 2*". I have carefully read the judgment cited by learned Advocate for the plaintiff, however with great respect the facts in the cited case are different from the fact in the present case. In the cited case Hon'ble High Court dealt with the stage of maintainability of application for impounding the document. In the present case, the application under consideration is not for impounding of document but is for temporary injunction.

17. Learned Advocate for the plaintiff further relied upon Judgment of Hon'ble Bombay High Court in *Bansrajji Devi Singh Vs. Byramjee JeeJeebhoy Private Limited 2006 CJ. (Bom) 189*, wherein it is held that, "*Merely a holder or occupant does not meet the requirement of law for exercising of such right*". With great respect to the cited case, the facts in the cited case are different from the present case as in the present case, the record prima facie shows that, the defendant is in possession and plaintiff has not challenged revenue entries and the mutation entry in his name since long. However, in the cited case the person claiming possession had to prove that his possession was lawful and he has come in possession by legal conveyance. It is settled principle of law

mini trial should not be conducted while deciding of the application for temporary injunction. Therefore, at this juncture, only prima facie case is looked into.

18. He further relied upon the Judgment of Hon'ble Supreme Court in **Annathulla Sudhakar Vs. Buchi Reddy, 2008 CJ(SC) 41**, wherein it is held that, "**A person is in wrongful possession is not entitled to an injunction against the rightful owner**". With great respect to the cited judgment, the facts in the cited judgment are different from the facts in the present case as in the cited case trial was conducted and the suit was finally adjudicated. However, in the present case, trial is yet to commence. Learned Advocate lastly relied upon Judgment of Hon'ble Bombay High Court in **Shipgonda Balgonda Patil and others Vs. the director of resettlement and other, AIR 1992 Bom.72**. I have carefully perused the cited Judgment, however, it deals with the law of law of land acquisition and partition under Hindu Succession Act. With great respect to the cited case, the question before this Court is not as the one in the cited case, therefore , it is not helpful to the plaintiff.

19. In this context following judgments assumes importance. Hon'ble Bombay High Court in **Shali Gramdev Laxmi Naraiana Vs. Shali Datta Devidas 1996 SCC online Bom.288**, held that "**Considering all these facts, prima facie, establish that the suit property is in possession of the appellant. In fact the entry in the revenue record clearly raises a presumption**".

20. Hon'ble Bombay High Court in **Jagannath Kulkarni (Sathe) Vs. Devkant Kulkarni (Sathe) 2015 SC online Bom.1670** observed that, application for temporary injunction by defendant was rightly rejected by trial court on the basis of 7/12 extract and in absence of any counter material to rebut the presumption which is created on account of said revenue entries.

21. Hon'ble Bombay High Court in *Ramdas Trimbak Sanap Vs. Bajirao Trimbak Sanap (2018) Mah LJ 866*, held that ***“Prima facie mutation entry shows that respondent is in possession of said land.”***

22. There is nothing on record to show that, plaintiff has rebutted defendant's entry in the record of right as well as mutation entry of suit property. It is the contention of plaintiff that erroneous, consolidation scheme has been carried. However, the plaintiff has not challenged the consolidation scheme. Hence, at this juncture there is nothing on record to show that, plaintiff has challenged mutation entry no.9797 and the consequent entries showing defendant's possession over suit property. Therefore, silence on plaintiff's part for several years shows that, plaintiff has not objected to the entry of defendant's name in suit property. Plaintiff has prima facie failed to show that, he is in possession of suit property. In absence of effective challenge or attempt to challenge mutation entry no.9797, at this juncture, there is no prima facie proof of plaintiff's title and possession over suit property. Therefore, plaintiff has failed to prove prima facie case in his favour. Accordingly, I answer point no.1 in **negative**.

As to point no.2 and 3 :-

Balance of convenience & irreparable loss:-

23. As discussed above, plaintiff has failed to prove prima facie case in his favour. It is pertinent to note that, silence on the part of plaintiff for several years and non challenge of revenue entries in defendant's name shows that, balance of convenience tilts in favour of the defendant. Irreparable loss means the loss which cannot be compensated in terms of money. In the present case, even if it is considered that, the compensation of acquisition or consideration of sale deed, as the case may be is given to the defendant and the plaintiff succeeded in the suit, then also plaintiff has option to recover the compensation or consideration from the defendant. Therefore, if the injury can be compensated it cannot be said to be irreparable injury. Hence, no irreparable loss

would be caused to the plaintiff if injunction is refused. Plaintiff has failed to prove by balance of convenience and irreparable loss in his favour.

24. In this context Judgment of Hon'ble Bombay High Court in ***Bhavna Vs.Navneet reported in 2015(3)MH LJ 472*** assumes importance. In para 8 therein, his Lordships has observed that, ***“Once the prima facie is not established, the further aspects as to balance convenience and irreparable loss are immaterial and they need not be considered”***. As discussed above the plaintiff has failed to prove prima facie case in his favour. Balance of convenience tilts in defendants favour. Therefore, the plaintiff has failed to prove balance of convenience and irreparable loss in his favour. Accordingly, I answer point no. 2 and 3 in **negative**.

As to point no.4 :-

Entitlement of Temporary Injunction

25. Prima facie case, balance of convenience and irreparable loss are three essential elements for grant of temporary injunction. Plaintiff has failed to prove three elements essential for grant of temporary injunction. The plaintiff has prayed for temporary injunction to restrain defendant from obstructing in plaintiff's peaceful possession. However, plaintiff has prima facie failed to prove his possession over suit property, hence injunction in that regard cannot be granted.

Plaintiff has further prayed for temporary injunction to restrain defendant from creating mutation entry in regard to suit property. However, civil court has no jurisdiction to direct revenue entries from entering or deleting any name in revenue records. Further temporary injunction to restrain alienation also cannot be granted in absence of plaintiff's prima facie proof of title. Therefore, plaintiff is not entitled for the equitable relief of temporary injunction as prayed. Accordingly, I answer point no.4 in **negative**.

As to point no.5 :-

26. In view of reasons discussed above and in answer to point no.5, I pass

following order.

ORDER

01. The application **Exh.5** is rejected.
02. No order as to costs.

(R. N. Khan)

Date –21.09.2019.

Civil Judge Jr. Division,Igatpuri.

CERTIFICATE

I affirms that the contents of this P. D. F. file Judgment are same word for word as per original Judgment.

Name of the Court :- R.N.Khan
Judicial Magistrate First Class, Igatpuri

Name of the Steno :- N. S. Sable.

Date :- 21/09/2019

Judgment signed by
presiding officer :- 21/09/2019

Judgment uploaded on :- 21/09/2019