

RCS. NO. 178/2012.

( Vithhal Mahadu Bachhav Vs Sanjay Bhaskar etc. )

ORDER BELOW EXHIBIT 5

( Passed on 12.03.2014 )

1. By this application plaintiff prays to restrain the defendants from causing obstruction to his peaceful possession on the land admeasuring 31 R situated towards the western side of land admeasuring 0.46 R which is towards the southern side of gat no. 70/1/2A/1B ( hereinafter referred to as suit land ) as well as to restrain defendant no. 1 and 2 from alienating or disposing of the suit land.

2. Plaintiff claims to be the owner and possessor of the suit land on the basis of the partition in between him, defendant no. 3 and their mother. He contends that he had filed RCS no. 177/92 against his brother defendant no. 3 and Yadav Zipru. The suit is alleged to have been compromised and out of area admeasuring 0.46 R, plaintiff had given 0.15 R to defendant no. 3. He further contends that Bhika Yadav moved a suit RCS no. 148/02 against him and defendant no.3 which came to be dismissed. The Appeal no. 23/10 is pending . He contends that defendant no. 3 and Bhika with intent to grab the suit land in collusion and defendant no.1 filed RCS no.19/12 at Malegaon Court and thereafter the parties compromised the matter. The appeal filed by Bhika Yadav thereafter was withdrawn. Plaintiff alleges that on 01.03.2012 defendant no. 3 executed sale deed in favour of defendant no. 1 and defendant no. 2. Plaintiff further

contends that his consent was not obtained and so both the sale deeds are false and fabricated. The name of the plaintiff could not be entered in 7/12 extract because of the pendency of the proceedings.

3. He further contends that mutation entries of the execution by defendant no. 3 are certified in the name of defendant no. 1 and 2. Plaintiff apprehends the forceful dispossession from the defendants . Hence this application.

4. Defendant no.3 contest this application by filing say at Exh 28. He claims to be owner and possessor of the suit land on the basis of penalty paid and renewal of the suit land from government. He contends that he had entered into an agreement with Bhika Yadav in 1984. However, according to him because of false and fabricated transaction of the plaintiff the revenue record was altered. He further contends that afterwards he got set aside the entries of the revenue record. According to him, suit filed by plaintiff bearing RCS no. 177/92 was withdrawn by him. In that suit plaintiff had claimed possession. Plaintiff had moved one compromise deed which came to be rejected. Defendant claims possession of Bhika Yadav on the suit land since 1984. He further contends that in RCS 149/2002 as well as in the appeal the interim order is passed in favour of Bhika Yadav.

5. He further contends that Bhika Yadav has filed an appeal at Malegaon Court which came to be compromised with him and thereafter in the suit filed by defendant no. 1 and 2 they

compromised the matter and executed the sale deed in favour of defendant no. 1 and 2. He denies the possession of the plaintiff on the suit land and submits to reject the application.

6. Defendant no. 1 and 2 contest this application by filing say at Exh 33. They support the contention of defendant no. 3. They claim their ownership and possession on the suit land from the date of execution of sale deed and thereby submit to reject the application.

7. On rival contentions of the parties, following points arise for my determination. I record my findings against each of them for the reason there under

<u>Points</u>	<u>Findings</u>
1. Whether plaintiff proves his prima- facie case?	... No
2. Whether the balance of convenience lies in favour of plaintiff ?	... No
3. Whether plaintiff would suffer an irreparable loss, if his prayer of temporary injunction is disallowed?	... No
4. What order?	... Application stands rejected.

### REASONS

#### As to point no. 1 :

8. For the purpose of grant of temporary injunction, the claimant party has to prove a prima-facie case. It is bonafide dispute requiring determination without prejudging the case.

9. Admitted that defendant no. 3 has executed sale deeds in favour of defendant no. 1 and 2 dated 01.03.2012. The filing of suits and appeals in between the parties is undisputed. At the outset, plaintiff as well as defendants claim their ownership and possession on the suit land. Plaintiff has filed the hakka patra to disclose suit land to be joint family property and claims his title on the basis of the admission and settlement in RCS no. 177/92 between him and defendant no. 3. On the contrary defendant no. 3 files the copy of RCS 177/92 alongwith the composition application and order in that suit. Going through the suit, it reflects that the composition came to be rejected between the parties and the suit was withdrawn. Much more mess is made by the plaintiff pointing fingers on the factum of unlawful compromise entered and his consent not obtained. So far as the contention of ownership and the legality of compromise and sale deeds is concerned, it is a matter of trial and evidence and cannot be decided at this stage without affording an opportunity to the parties.

10. At the outset, the main controversy between the parties is the possession on the suit land. Admitted that the entries in 7/12 extract stand in the name of defendant no. 1 and 2 . Plaintiff has moved no documentary evidence to prima facie satisfy his contention of possession except his bare an interested words. The copy of RCS 177/92 discloses that plaintiff has claimed the possession of the suit land from defendant no. 3 and Bhika Yadav. The possession of Bhika Yadav was upheld in RCS 138/2002 while granting interim injunction. Thus, in black and white, plaintiff has failed to prove his prima facie possession on the suit land.

11. The necessary corollary is that the plaintiff has failed to establish his prima facie case which is required to be safeguard and preserved till the conclusion of trial. Consistent to above, I answer point no.1 in the negative.

As to point no. 2 to 4 :

12. Plaintiff has failed to prove his strong prima-facie case ie existence of his right of ownership and possession. If an injunction is refused, no greater loss or inconvenience would be caused to the plaintiff. However, if the injunction is granted, an irreparable loss or hardship would be caused to the defendant no.1 & 2. Resultantly, I answer point no. 2 & 3 in the negative and pass following order for point no. 4.

**ORDER**

1. Application stands rejected with costs.
2. Costs in main cause.

( dictated and pronounced in open Court ).

Date :- 12.03.2014

( M. S. Kochar )  
Civil Judge J.D. Satana.

**CERTIFICATE**

I affirm that the contents of this PDF File Judgment are same, and word to word as per original judgment.

Name of Steno - N. H. Ahire.  
Court Name - Kum. M. S. Kochar, C.J.J.D., Satana.  
Date - 12/03/2014.  
Judgment signed by P.O. - 12/03/2014.  
Judgment uploaded on - 12/03/2014