

Reg. Civil Suit No.242/2016
Shrikant V/s Sadhana**ORDER BELOW EXH.5**

Present application is filed on behalf of the plaintiffs under Order-XXXIX Rule-1 and 2 of the Civil Procedure Code for restraining defendants from causing obstruction to their possession over the suit properties.

2. Brief facts of the plaintiff's case are as under :

The landed property situated at Andur, Tq. Tuljapur Sr. No. 163/2/4 (Old Sr. No.163/B) adm. area 02 H.43 R.,& Sr. No. 163/2/2 (Old Sr. No. 163/2/2) adm. area 02 H.80 R. particularly mentioned in the application para No. 2. (hereinafter referred as 'suit properties' for the sake of brevity). It is contended that the original survey number of suit properties was Sr. No.163/B. However, due to changes in revenue record it becomes 163/2/2 and 163/2/4. suit properties are purchased by plaintiffs from Bhramawabai Fulchand Kasture on 19.01.1979. Since the sale-deed plaintiffs are in possession of the suit properties as a owner. plaintiffs have developed the suit properties after purchase. Defendants are not concerned with suit properties in any way. However defendants causing obstruction to their possession over suit properties. They tried to convince the defendants but in vain. If temporary injunction is not granted, plaintiffs will suffer heavy and irreparable loss. Therefore, they prayed for restraining defendants from causing obstruction to the possession till disposal of the suit.

3. The defendant No 1 to 4 resisted the claim by filing their written statement and say at Exh.39. They denied the description of suit

properties. According to them defendant No.1 has purchased 01 H 10 R land out of Gat No. 163/2/1 from defendant No. 2 to 4 on 07.06.2016. plaintiffs property is situated towards souther side of their land. However, plaintiffs have not shown their land in description. Sr. No. 163/1 and 163/2/1 are situated towards northern side of Sr.No. 163/B (Old Sr. No. 163/A). Further, there are two pieces towards souther side of Sr. No. 163/2/1 in which plaintiffs land is situated towards east side and on west side the land of Shikshan Prasarak Mandal. Plaintiffs are in possession of the area purchased by them. However, they shown wrong boundary of northern side with intent to grab defendants property. The plaintiffs are not come with clean hands. Hence, they prayed to reject the application.

4. Considering the averments of both the parties, documents filed on record and hearing the argument of learned counsel Shri N.M. Kanade appearing on behalf of plaintiff, Shri K.G.Kulkarni appearing on behalf of defendants following points arise for my determination and I have recorded my findings against each of them for the reasons stated below.

Sr.No.	Points	Findings
1	Whether the plaintiffs have made out <i>prima-facie</i> case?	In the affirmative.
2	Whether the plaintiffs prove that balance of convenience lies in their favor?	In the affirmative.
3	Whether plaintiffs prove that irreparable loss will cause to them if order of injunction is refused?	In the affirmative.
4	What order?	As per final order.

REASONS

Both the parties have filed some documents on record in support of their contentions, they are mentioned and appreciated at appropriate places hereinafter.

AS TO POINT NO.1 TO 3 :

5. All these three points are interlinked with each other, I am going to discuss them simultaneous as it will facilitate to adjudicate the matter at once. While deciding temporary injunction application, the plaintiff has to prove the cardinal principles viz. *prima-facie* case, balance of convenience and irreparable loss.

6. The Plaintiffs are come up with the case that the suit properties are purchased by them from Bramawabai Fulchand Kasture. Since then they are owners and possessors of the suit properties. To substantiate this contention plaintiffs have filed the copy of sale-deed vide Exh. 4/3 & 7/12 extract of suit properties at Exh. 8 & 9. On perusal of the said document it appears that plaintiffs have purchased the Sr. No. 163/B adm. 05 H 29 R on 19.01.1979. Their name is recorded on revenue record. This documents shows that they are owner and possessor of the suit properties. On the contrary defendants have contended that defendant No. 1 has purchased property from defendant No. 2 to 4 out of Gat No. 163/2/1 and their property is situated towards northern side of suit properties. Though the defendants are claiming their property in Sr. No. 163, they have not produced any document to support there contention. On the other hand the document produced by plaintiffs depicts that they are owners and possessors of the suit properties since the sale-deed.

7. The documentary evidence is suggesting ownership and

possession of the plaintiffs. Prima-facie it is seen that plaintiffs are in possession of the suit properties by virtue of sale-deed. Plaintiffs are having apprehension of dispossession and the act of defendants to cause obstruction to the their possession. As plaintiffs are in possession of the suit properties, balance of convenience lies in their favor. If the temporary injunction is not granted, irreparable loss will be caused to the plaintiffs. Hence, I answer point No.1 to 3 in the affirmative.

AS TO POINT NO.4 :

8. Hence, in the set of present facts and circumstances and the documents on record, the plaintiffs are entitled to the relief of temporary injunction. Accordingly in answer to point No.4, I proceed to pass the following order.

ORDER

1. The application is allowed.
2. Defendants, their agents, servants or any person claiming through them are temporarily restrained from causing obstruction to plaintiff's possession over the suit properties till disposal of the suit.
3. Cost in cause.

Sd/-

(T.P. Mote)

Date : 08/ 02 / 2019

2nd jt. C.J.J.D. Tuljapur