



ORDER BELOW EXH.5

1. The plaintiffs have filed this application under Order 39 Rule 1 of the Civil Procedure Code. In this application, the plaintiffs are praying for temporary Injunction against defendants thereby restraining them from causing obstruction or disturbance in the possession of plaintiffs over suit land bearing gut no.506 of village Gurholi, Tal. Purandar admeasuring to the extent of 0-H 75-R having four boundaries as mentioned in the application pending hearing and final disposal of the suit.

2. I have heard counsels of concerned parties. I have perused pleadings of the parties as also documents on record. Record perused.

3. It is alleged by plaintiffs in this application that, they have purchased suit property on 05/08/2017 by way of registered sale-deed no.4782/2017 for a consideration of Rs.9,90,000/- from Sharad Manohar Khaladkar and others. The property under the said sale-deed was the property received to Sharad Manohar Khaladkar and others in a partition. The plaintiffs on 05/03/2019 started leveling the road situated towards eastern side of the suit property, at that time defendants obstructed and threatened and abused the plaintiffs.



The plaintiffs also lodged complaint with the police about this incident. It is further alleged that, on 06/03/2019 the defendants with the help of JCB machine started arranging stones by the side of tar road situated in the suit property. On making enquiry defendants were not in a position to hear anything etc. As such, the defendants are obstructing possession of plaintiffs. It is also submitted by the plaintiffs that, defendants have their separate property towards western side in gut no.506. Hence, this application.

4. The defendants have given their joint written statement/say at Exh.14. They have denied all the allegations made by plaintiffs. It is denied by them that, the suit property was belonging to Manohar Ananta Khaladkar through amicable partition. It is alleged by the defendants that, gut no.506 admeasuring 1-H 39-R plus 0-H 11-R as pot kharab was originally belonging to Ananta Khaladkar etc. There was no partition by metes and bounds among heirs of Manohar Khaladkar and hence there is no question of independent ownership on the basis of amicable partition to Manohar Ananta Khaladkar. The defendants further submit that, they have purchased undivided share of Shyamla Dattatraya Tillu to the extent of 0-H 75-R plus pot kharab out of the suit property on 07/04/2017 etc. In the last, defendants prayed to reject the



application.

5. On the basis of pleadings of the parties I have framed following issues for determination of this application, which I answer them along with my reasons and findings thereon, as follows:

Sr. No.	Issues	Findings
01.	Whether prima facie case is made out by plaintiffs?	Yes.
02.	Whether balance of convenience lies with plaintiffs ?	Yes.
03.	Whether plaintiffs are going to suffer inconvenience or irreparable loss or injury in case application for temporary injunction is disallowed?	Yes.
04.	What Order ?	Application is allowed.

REASONS

6. AS TO ISSUE NO.1 TO 3:-

The arguments of the parties are in line of their respective pleadings. In an application for temporary Injunction for protection of possession, what is required is to prove prima facie possession over the concerned property. In this case, the



plaintiffs claim their possession over the suit property within the four boundaries as mentioned in this application. The defendants in their written defence on page no.14 in para no.23 have clearly admitted that, the plaintiffs have their separate possession over the suit property, but they denied any kind of obstruction as alleged by the plaintiffs. Thus, it appears that, there is no dispute regarding possession of plaintiffs over suit property. However, much has been argued on behalf of defendants to the effect that, there was no partition by metes and bounds among the heirs of Manohar Khaladkar. It is to be kept in mind by the defendants that, the plaintiffs have instituted this suit for perpetual Injunction only, on the basis of purchase of suit property by way of a registered sale-deed. This is not a suit for partition. The plaintiffs have produced on record sale-deed no.4782/2019 dated 05/08/2017, which prima facie shows that they have purchased the suit property within the four boundaries as mentioned in this application. The said sale-deed further prima facie shows that, the possession of the suit property has been delivered by the vendors of the plaintiffs. From the 7/12 extract of gut no.506, it prima facie appears that, the suit property has been mutated in the names of plaintiffs. Thus, it is clear that, plaintiffs have made out a prima facie case in their favour. The plaintiffs have made out a case which needs to be inquired into in due course of trial.



7. The learned counsel for defendants strongly argued that, there is no mention of road in the sale-deed but it is mentioned in the plaint and if present application is allowed then there is possibility that the plaintiffs may misuse it. I disagree with this submission. Because, if the prayer clause of this application is seen then it becomes clear that, the plaintiffs are seeking temporary Injunction in respect of suit property within the four boundaries as described in the present application. Hence, this submission raised by defendants is not sustainable.

8. It has been pleaded by the plaintiffs that, the defendants have caused obstruction or disturbance in the possession over suit property on 05/03/2019 and 06/03/2019 for which plaintiffs have lodged complaint with the police. The plaintiffs have also produced on record copies of complaints dated 05/03/2019 and 06/03/2019 made with the police. These complaints prima facie show that, they were lodged by plaintiff no.2 against defendants for abusing and threatening etc. Thus, I am of the considered view that, since possession is prima facie proved by the plaintiffs, therefore, if Injunction as prayed is not granted then plaintiffs would suffer irreparable loss. It is the plaintiffs who will face more inconvenience than



defendants if the present application is not allowed. In such circumstances, I hold that plaintiffs have proved issue no.1 to 3. So, I answer issue no.1 to 3 in the affirmative.

9. **AS TO ISSUE NO.4:-**

Relief of injunction is a discretionary relief. In the facts and circumstances of this case, I want to exercise my discretion in favour of plaintiffs. In answer to issue no.1 to 3, the application for temporary Injunction deserves to be allowed. Hence, I hold my finding to issue no.4 accordingly. Hence, I pass following order:

ORDER

- I. Application Exh.5 is hereby allowed.
- II. Defendants are hereby temporarily restrained from causing obstruction or interference into the possession of plaintiffs over suit property within the four boundaries described in the application for temporary Injunction (Exh.5), pending hearing and final disposal of the suit, otherwise than by due process of law.
- III. Costs in main cause.

Date:-20/01/2023.

(Md. Taher Bilal)
Civil Judge J.D., Saswad.



CERTIFICATE

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

Name of Steno : S. S. Gupte, Stenographer (Grade III)

Court Name : Shri. Md. Taher Bilal
Civil Judge Jr. Division, Saswad.

Date of Order : 20/01/2023

Judgment signed by presiding officer on : 20/01/2023

Judgment uploaded on : 21/01/2023