

ORDER BELOW EXH. 5 IN R.C.S. No. 311/2021**Sunil Lunawat & Ors. V/s. Bhalchandra Babar & Anr. 1**

This is an application filed by plaintiff under order 39 rule 1 and 2 of the Code of Civil Procedure and prayed for ex-parte injunction.

2. Heard Ld. Adv. Shri. P. V. Botre for the plaintiffs. Ld. Adv. argued that, the suit property is specifically mentioned in para 1 of the plaint is self acquired property of plaintiffs whereby they performed social activities through Charitable Trust. The suit property ad-measuring 0 H. 89.50 R. area is the subject matter of this suit which is originally belongs to Gat No. 779. But due to division of said Gat number divided in 779/1 and 779/2. The suit property falls in Gat No. 779/1. The plaintiffs has obtained possession of suit property by way of sale-deed dtd. 13/07/2017. Defendant is adjacent land owner and co-sharer of Gat No. 779/2. The defendant has no concerned with the suit property however, he has disturbed possession of plaintiffs dtd. 7/11/2021 by digging pit holes towards western side of suit property. Thereafter, plaintiffs filed police complaint against defendant. There is apprehension that, the defendant will again disturbed peaceful possession of plaintiffs over the suit property. Therefore, prayed for exparte injunction.

3. Perused record filed along with Exh. 3 it appears that, the

suit property is possessed by plaintiffs (Exh. 3/1). Accordingly, the suit property has been purchased by plaintiffs from Santosh Sadhu Dalvi and Mangesh Dattatray Shivale by executing sale-deed dtd. 13/07/2017 (Exh. 3/3). The plaintiffs filed electricity bills, extracts of form No. 8 and revenue receipts which prima-facie reveals plaintiffs are in possession of suit property. Mutation entry No. 4828 (Exh. 3/12) shows entire Gat No. 779 is divided in two Gat number and Gat No. 779/1 has been mutated in the name of plaintiffs. Plaintiffs produced police complaints (Exh. 3/13 and 3/14) shows that, defendant is trying to disturb possession of plaintiffs who is adjacent land owner of Gat No. 779/2. Plaintiffs filed rough map (Exh. 3/16) and other documents (Exh. 3/17 and 3/18) about their social cause performed by them in the suit property. Upon perusal of map it appears that, plaintiffs performed social activities through Charitable Trust in the suit property. Considering all these facts and relevant document on record, prima-facie there is apprehension to disturb peaceful possession of plaintiffs. An apprehension is not without reasonable cause. The application filed along with affidavit. Thus, apprehension raised by the plaintiffs relating to disturb his possession seems reasonable. Therefore, it is fit case to exercise power under section 39 rule 3 of the Code of Civil Procedure. Hence, to restrain defendant, it would be just to grant ex-parte injunction in favour of plaintiffs till defendant appear. Hence, I pass following order;

ORDER

1. Defendant is hereby restrained that not to disturb possession of plaintiffs over the suit property till he appears.
2. Issue show cause notice to defendant as to why ex-parte injunction should not be continued in favour of plaintiffs, r/o 27/11/2021.
3. Plaintiff shall comply Order 39 R. 3 (a) of the Civil Procedure Code.

Saswad
Date:-15/11/2021

Sd/-
(Smt. D. M. Patil)
2nd Jt. Civil Judge Junior Division,
Saswad.

CERTIFICATE

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

Name of Steno : Mrs. S. R. Kamble, (Grade 3)

Court Name : Smt. D. M. Patil
2nd Jt. C.J.J.D. & J.M.F.C., Saswad.

Date of Order : 15/11/2021

Order signed by presiding officer on : 15/11/2021

Order uploaded on : 16/11/2021