

R.C.S. NO.311/2021**ORDER BELOW EXH.05**

(Shri. Sunil Pannalal Lunavat etc. V/s. Shri. Bhalchandra Shripati Babar)

The suit is for perpetual injunction. The present application has been filed under Order XXXIX, Rule 1, 2 of the Civil Procedure Code for temporary injunction restraining the defendant from causing obstruction to their possession in the suit property.

Description of suit property -

2. At village Bhivari, in division Pune, Sub-division Purandar, Taluka Purandar, District Pune.

Sr. No.	Gat No.	Area	Aakar	East	South	West	North
		Hec.-R.	Rs.-paise				
1.	779/1	00.89.50	01.18	Gat No.779/2	Gat No.779/2	Gat No.686	Gat No.779/2

Including RCC construction, compound, two bore-well, trees etc. are the subject of the present suit. (The said property is hereinafter for convenience referred collectively as "the property").

3. It is the contention of plaintiff that, original Gat Number was 779. T.I.L.R. Purandar in demarcation registered no.195/2017 divided said Gat Number into Gat No.779/1 and 779/2. In Gat No.779/1, the plaintiff's purchased 89.50 R from Santosh Sadhu Dalavi and Mangesh Shivale vide registered sale deed No. 4240/2017. From the date of sale deed plaintiff's are in possession of suit property.

4. The plaintiff further contended that, the suit property was

purchased for social purpose. Accordingly, plaintiffs have made construction on the said property having two registered trusts of Jain community. The defendant has no right or interest in suit property.

5. In Gat No.779, original owner sold 1 H. 20 R. to Tanaji Krushna Katake and Shivaji Krushna Katake. Out of said property both of them sold 60 R. to Pandurang Govind Dhawale. Thereafter, they had need of money therefore Shivaji and Tanaji took loan from defendant. As surety of repayment of that loan executed document on 24/01/2007. Thereafter, the Shivaji and Tanaji had paid the amount of Rs.2,60,000/- to defendant. However, defendant did not executed re-conveyance deed in favour of Shivaji and Tanaji. Therefore, name of defendant remained on 7/12 extract of Gat No.779/2. The defendant never had possession in Gat No.779. Therefore, defendant filed R.C.S. No.183/2018 against plaintiffs and other sharers in said property for partition and perpetual injunction. But defendant withdrawn said suit. In that suit defendants interim injunction application was rejected.

6. The defendant had signed on Form No.4 in demarcation application and consented for division of Gat number 779. The division of Gat No.779 is sub-judice before land survey authority. On 07/11/2021 defendant entered in plaintiff's property to create his possession and thereby obstructed plaintiff's possession in suit property. The defendant tried to dispossess plaintiff's from suit property. The defendant has no right, interest in suit property. If he continued his illegal acts, it will cause irreparable loss to plaintiff's. Hence, prayed for injunction against defendant.

7. The defendant filed his say (Exh.24) and denied the adverse contentions against him in application. The defendant contended that, the description of suit property and rough map are not authenticated. Demarcation registered No.195/2017 dated 10/10/2017 is not legal. Defendant signature was not taken. The said matter is sub-judice before S.L.R., Pune.

8. He further contended that, the plaintiff's suppressed material facts that, the suit property was divided as per order of Tahasildar, Purandar by virtue of mutation entry No.2041 on 23/01/2005. The sub-division exists from 2005. At the time of survey record of village Bhivari Gat No.1230/A was allotted Gat No.779/A and further with new Gat No.779/1 and Gat No.1230/B was allotted Gat No.779/2. However, effect was not given on village map, after execution of consolidated scheme, because phalani was not made at that time.

9. The defendant further stated that, Gat No.1230/A admeasuring 2 H. 41 R. and 1230/B admeasuring 00 H. 75.5 R. was owned by Dnyanoba and Sopan. They sold 1 H. 00 R. in Gat No.1230/A and 00 H. 20 R. in Gat No.1230/B to Shivaji and Tanaji Katake. As there was no division of original Gat No.1230. Tanaji and Shivaji were in common possession with Dnyanoba and Sopan. Thereafter, in Gat No.779/1, 00 H. 60 R. sold to Pandurang Govind Dhawale. Thereafter, Pandurang Dhawale sold said area to Shashikant Kamthe.

10. Tanaji and Shivaji executed power of attorney in favour of Govind Jog and Vikram Khote, to sell the land in respect of Gat No.779/1 admeasuring 1 H. 00 R. and Gat No.779/2 admeasuring 00 H.

20 R. However, power of attorney holder, sold said property to Uttam Phulave. Having knowledge about sale deed by power of attorney holder, Tanaji and Shivaji again executed sale deed about same land in favour of defendant. However, after amicable settlement Uttam Phulave executed sale deed in favour of defendant on 17/11/2009. Thereafter, defendant in possession of said property. Possession given by owners to plaintiffs is not proper specific and exact. Plaintiffs have started construction inspite of having knowledge about irregularity of possession. They tried to fix their possession based on illegal demarcation and *phalni*. Plaintiffs property is 35.250 R. in Gat No.779/1 and 54.250 R. in Gat No.779/2. Plaintiffs do not have 89.50 R. in Gat No.779/1. The plaintiff caused injustice to defendant by demarcation and division by which name of plaintiffs entered in Gat No.779/1 and name of defendant and other sharers entered in Gat No.779/2. The plaintiff do not came with clean hand. Prima facie case is not with plaintiffs. Hence, prayed to reject an application.

11. After going through pleading of both parties and the application, following points arise for determination. I have recorded my findings thereon for reasons mentioned herein under.

Sr. No.	Points	Findings
1	Whether the plaintiff has made out a prima-facie case ?	Yes.
2	Whether balance of convenience lies in favour of the plaintiff ?	Yes.
3	Whether irreparable loss will be caused to the	Yes.

	plaintiff, if injunction is not granted ?	
4	What order ?	As per final order.

REASONS

AS TO POINT NOS.1 TO 4: -

12. In order to prove prima-facie contents of the application and say plaintiff and defendant filed following documents -

Sr. No.	Documents	Exh.
1.	7/12 Extract of Gat No.779/1, 779/2	Exh.3, Sr. No.1 & 2
2.	Copy of sale deed dated 13/07/2017	Exh.3, Sr. No.3
3.	Copy of resolution passed by Grampanchayat Bhivari regarding registration of house in suit property of plaintiff.	Exh.3, Sr. No.4
4.	Grampanchayat extract No.8 of property No.1252 of plaintiff.	Exh.3, Sr. No.5
5.	Copy of affidavit given by the plaintiff to the electricity board for getting electricity connection.	Exh.3, Sr. No.6
6.	Electricity bills of suit property.	Exh.3, Sr. No.7
7.	Copies of R.C.S.No.156/2012 and R.C.S. No.183/2018 .	Exh.3, Sr. No.8 and 9
8.	Copy of Exh.5 and order in R.C.S. No.183/2018.	Exh.3, Sr. No.10
9.	Copy of Form No.4 in reference to demarcation register of Gat No.779 of Bhivari with signature of defendant thereon.	Exh.3, Sr. No.11
10.	Mutation entry No.4828.	Exh.3, Sr. No.12

11.	Copy of complaint given by plaintiffs dated 07/11/2021.	Exh.3, Sr. No.13
12.	Copy of complaint given by plaintiff dated 08/11/2021 and dated 09/11/2021.	Exh.3, Sr. No.14
13.	Copy of power of attorney issued by plaintiff No.2 to 6 in favour of plaintiff No.1.	Exh.3, Sr. No.15
14.	Map given by architect about construction and suit property.	Exh.3, Sr. No.16
15.	Invitation card of Religious program in respect of suit property on 7/5/2017	Exh.3, Sr. No.17
16.	New of religious program in Dainik Sakal dated 08/05/2017.	Exh.3, Sr. No.18
17.	Copy of sale deed dated 24/01/2007 vide No.239/2007.	Exh.29, Sr. No.1
18.	Copy of sale deed dated 17/11/2009 vide No.4105/2009.	Exh.29, Sr. No.2
19.	Copies of 7/12 extract of Gat No.779/1, Gat No.779/2 and M.E.No.3009.	Exh.29, Sr. No.3
20.	Copy of demarcation register No.1941/11, dated 22/01/2011.	Exh.29, Sr. No.4
21.	Copy of demarcation register No.195/17, dated 10/10/2017.	Exh.29, Sr. No.5
22.	Form No.4.	Exh.29, Sr. No.5
23.	Copy of complaint to police station dated 30/11/2021.	Exh.29, Sr. No.6
24.	Judgment copy of Land acquisition, Pune dated 31/01/2022.	Exh.16 Sr. No.1
25.	Certified copy of demarcation register No.1328/2022.	Exh.16 Sr. No.2
26.	Complaint of Bhalchandra Babar to Land acquisition dated 08/03/2022	Exh.16 Sr. No.3

27.	Copies of affidavit of Tanaji Krushna Katake, Shadurl Shivaji Katake, Shashikant Vitthal Kamathe, Ishawar Sopan Katake and Maruti Dnyanoba Katake.	Exh.55 Sr. No.1
28.	Judgment copy of Land acquisition, Pune dated 12/04/2021.	Exh.55 Sr. No.2
29.	Judgment copy of Land acquisition, Pune dated 31/01/2022.	Exh.55 Sr. No.3
30.	Judgment copy of Land acquisition, Pune dated 15/03/2022.	Exh.55 Sr. No.4

13. Ld. Advocate for plaintiff argued that, in R.C.S. No.156/2012, between defendant and his predecessor entitled, it is not finally decided whether the document was sale deed or mortgage deed. The documents produced by plaintiff are sufficient to show that, plaintiffs are in possession of suit property and they have made different constructions on it. Other sharers in original Gat No.779 admits possession of plaintiffs in suit property. The plaintiffs have prima-facie case. If injunction not granted defendant will forcibly create his possession in plaintiff's property, it will cause irreparable loss of plaintiffs. Balance of convenience is with plaintiffs. Hence, prayed to allow an application.

14. On the contrary, Ld. Advocate for defendant argued that, the suit is for mere injunction. At one side plaintiffs do not admit ownership of defendant, on the contrary in four boundaries of suit property defendant is towards west. The plaintiffs made division as 779/1 and 779/2, fraudulently and without taking signature of defendant. The plaintiff suppressed material facts from the Court. There is no

encroachment by defendant. Vague allegations are made. The divisions as mentioned above, the situation of properties of all sharers were different. The plaintiffs cannot take dis-advantage of dispute between defendant and his vendor. Plaintiffs were never adjacent to road. Plaintiffs existing plot is of defendant. The plaintiffs do not file sale deed of their predecessor, which could clear the situation of there property. Who seeks equity must do equity. Wrong door cannot seek equity. Notices were given to plaintiffs to stop the construction. Till today ad-interim injunction is continued by plaintiff. There is no disobedience by defendant. Hence, prayed to reject an application.

15. Before going to discuss the evidence on record considering the nature of application it must be taken into consideration that, it is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the Court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it." But more importantly all these tenets must coexist together to enable to exercise judicial discretion in favour of the applicant. These three cardinal principles are to be applied in a proper perspective looking to the particular facts and circumstances of a case before deciding the grant of temporary injunction.

16. In short, it is the contention of plaintiff that, they are in possession of suit property as per their sale deed and *phalni* made in demarcation register No.195/2017. The defendant has no right in suit property. Moreover, defendants title is not clear, therefore, suit between defendant and his vendor is pending in Court. On perusal of document on record it clears that, Gat No.779/1 admeasuring 89.50 R. is in the name of plaintiffs. The plaintiffs claimed possession on the said property. Moreover, Gat No.779/2 is owned by defendant and other co-sharers. Their names on 7/12 extracts exists with their area. As the defendant admits about demarcation register No.195/2017 and accordingly mutation entry No.4828. As per said division plaintiffs property is separated and given Gat No.779/1 and property of defendant and other co-sharers given Gat No.779/2.

17. It is the contention of defendant that, plaintiffs have encroached on his property. As plaintiffs have not produced sale deed of their vendor. As the documents clears that, since 2017 from the date of division plaintiffs are in possession of suit property having construction of different kind on. It shows that, since 2017 defendant did not objected about encroachment on his property. Moreover, no prayer by defendant in present suit. As the fact that, R.C.S. No.156/2012 is pending. The fact of previous suit between defendant and his vendor does not affect on facts of the present case. As the suit is for injunction only.

18. The temporary injunction is being granted, when the defendant is about to make some injury to the property of the plaintiff or threatens the plaintiff to dispossess from the property or creates a

third party interest in the property. Prima-facie, though defendant contended about false signature on Form No.4 in demarcation register No.195/2017, the fact is on record. Yet there is no conclusive decision about the same. However, considering scope of application, to the extent of prayer in application only the point referred above are to be considered.

19. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. However, documents shows that plaintiffs are in possession of suit property. On the contrary, defendant indirectly admits in pleading plaintiffs possession on suit property. Till final disposal of the suit it is necessary to give injunction in favour of plaintiff in the protection of suit property. Hence, I have recorded findings of issue No.1 to 3 in the positive and for issue No.4 following order is passed.

ORDER

1. The application Exh.05 is allowed.
2. The defendant is hereby temporarily restrained from causing obstruction to plaintiff's possession in suit property by himself, agent, servant etc. till final disposal of the suit.

(Dictated and pronounced in open Court).

(Mrs. S. K. Deshmukh)

Date: 20/03/2024.

Jt. Civil Judge Junior Division, Saswad.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment/order :-

- a) Name of the Stenographer : Mrs. S. R. Kamble
- b) Court : Jt. Civil Judge Jr. Division & J. M. F. C, Saswad.
- c) Date of Judgment/Order on : 20.03.2024
- d) Judgment/Order signed by P.O. on : 02.04.2024
- e) Judgment/Order uploaded on : 04.04.2024