

R.C.S.218/2018

ORDER BELOW EXH.5

1. The plaintiffs have made the present application for temporary injunction under the provisions of Order 39 Rule 1 of and 2 of C.P.C.
2. Perused the application and say. Heard the Learned Advocates for both the sides.
3. In brief, facts of the present application are as follows:-
The subject matter of the present application is a property in Gat No. 372 admeasuring area 20 R situated at Mauje Khorwardi, Tal. Daund, Dist-Pune more particularly described in para 1 of the application. The said property is hereinafter referred as suit property for the sake of brevity. The plaintiffs state that the suit property originally belonged to Late Housiram Jagtap who is the father of plaintiff No. 1 & 3, husband of plaintiff No.2 & father in law of plaintiff No. 4. They state that after the demise of Housiram Jagtap on 21/02/1992 their names were entered to the 7/12 extract of suit property by virtue of M.E. bearing no. 841.
4. They state that in the year 2015, by virtue of the order passed by Tahsildar, partition took place between plaintiff No. 1 to 3 and defendant No. 4 & 5 and they were allotted an area

admeasuring 1 H 17 R. Thereafter again, in the year 2016, partition took place between plaintiffs as per the order of Tahsildar and plaintiff No. 2 to 4 each were allotted an area admeasuring 39 R. & M.E. bearing No. 2881 took place accordingly.

5. They state that in the year 2000, plaintiff No. 1 was in financial need & so he took a hand loan of Rs. 25,000/- from defendant No. 1 & 2. At that time on the insistence of defendant No. 1 & 2 a deed bearing registration No.832/03 was executed as security for the hand loan amount. However defendant No. 1 & 2 have misutilized the deed & have state it to be sale deed. They further aver that they have never executed a sale deed in favour of defendant No. 1 & 2 in relation to suit property. They further contend that, they from time to time have raised loans on the suit property and are cultivating the same & the 7/12 extract of suit property stands in their name. However defendant No. 1 & 2 on the basis of alleged sale deed are causing obstruction to their possession & trying to alienate the suit property. Hence they have filed the present application for the injunction to restrain defendant no. 1 & 2 from causing obstruction to their possession in suit property & also to restrain them from alienating the suit property and pray to allow the same.

6. As against this, defendant no 1 & 2 by filing their say

have denied the contentions made in the application. The sum and substance of their say is that, plaintiff of no 1 has executed a registered sale deed in their favour bearing registration no. 832/03 in respect of the suit property & had handed over its possession. They state that, as there was encumbrance on the said property their names could not be entered to the 7/12 extract of suit property. They further state that the partition which took place in the year 2016 is behind their back & was done when the sale deed was in existence. They also contend that the plaintiff is challenging the sale deed after a period of nearly 15 years and therefore he cannot seek the relief as sought. Mainly on the above grounds, they pray to reject the application

7. On the rival contentions of the parties following points arose for my determination and I have recorded my findings thereon with reasons as follows:-

Sr. No.	Points	Findings
1	Whether plaintiffs prove that they have prima facie case in their favour ?	In the negative
2	Whether balance of convenience lies in favour of plaintiffs ?	In the negative
3	Whether irreparable loss would be caused to plaintiffs if application is rejected ?	In the negative
4	What order ?	As per final order

REASONS

8. The plaintiffs in support of their application have filed affidavit of plaintiff no. 1 and have relied on the documents annexed with list Exh.3. The defendants in support of their defence has filed document annexed with list Exh. 17. The documents placed on record by both the parties would be hereinafter referred at appropriate places as and when required.

AS TO POINT NO. 1 TO 3

9. As the above points are inter linked with each other and to avoid repetition of evidence they are taken up together for common discussion. Having considered the submissions made on behalf of both the parties & on perusal of record, it appears that, it is the grievance of the plaintiffs that defendant No. 1 & 2 have misused the document which was executed in the year 2003 as a security for the amount of Rs.25,000/- taken from them. They strongly assert that the document bearing registration number 832/03 was never intended to be a sale deed, however defendant No. 1 & 2 by taking disadvantage of document have given it the colour of sale deed. They state that, they are in possession of the suit property & defendant no. 1 & 2 on the basis of the alleged sale deed are causing obstructing to their possession.

10. On the contrary defendant No.1 & 2 deny the possession of the plaintiffs over the suit property & contend that plaintiff No.1 has executed a registered sale deed in their favour bearing registration number 832/03 and plaintiff no. 2 & 3 have given their consent for the sale deed. They also state that, the plaintiffs have handed over the possession of the suit property on the very same day and recitals to that effect are contained in the sale deed.

11. As such, it appears that the issue between the parties revolves around the registered deed bearing registration number 832/03. As the plaintiffs and the defendant no. 1 and 2 are strongly disputing the deed bearing registration number 832/03, the nature of the deed & the nature of transaction between the plaintiff & defendant cannot be looked into at this stage & the same is to be taken into consideration after having full fledged trial.

12. As for now, the controversy lies in respect of the dispute regarding possession of suit property. The claim of temporary injunction, made by plaintiffs needs to be considered by Court in view of the provisions laid down under Order XXXIX, Rules 1 and 2 of Civil Procedure Code. Order XXXIX, Rule 1 of

Civil Procedure Code opens with the wording, “Where in a suit, it is proved by affidavit or otherwise, temporary injunction may be granted by the Court.” Prima facie case, balance of convenience and irreparable loss are the factors which are required to be taken into consideration by the Court while considering the application for temporary injunction. So far as material is concerned, the Court can resort to affidavit filed by the party or otherwise. The expression 'otherwise' refers to various other circumstances. In a given case there may be record of rights, various documents of title of transfer of the property or other circumstances. The consideration by the Court to such material at the stage of considering application for temporary injunction is one aspect of the matter and consideration of these circumstances, at the time of trial is different aspect of the matter.

13. At the stage of temporary injunction, Court can refer to documents which are produced on record without formal proof. At the time of trial, Court has to take into consideration the documents which are established in accordance with the provisions of the Indian Evidence Act and proved on formal proof.

14. In other words, formal proof of the documents, which otherwise is necessary at the time of deciding the suit in that strict sense is not necessary while considering the documents

concerned at the time of consideration of the prayer for temporary injunction. Public documents can be considered at the time of temporary injunction as well as at the time of disposal of the suit without formal proof and in view of the provisions of the Indian Evidence Act.

15. While considering the prima facie case, in case of temporary injunction the court has to record a finding as to whether the plaintiff has established prima facie possession over the suit property. Such possession, again has to be referable, either to the title of the property or some lawful right vested with the plaintiff. After fulfilling the test of of prima facie case, the Court has to turn to consider the question of equity between the parties. Irreparable loss to the plaintiff is also material while considering such application for temporary injunction.

16. Reverting to the case in hand, the plaintiffs claim that the suit property is their ancestral property & they are in possession of it. On the other hand, defendants state to have purchased the suit property by registered sale deed bearing registration number 832/03. Copy of the document i.e. sale deed is on record vide Exh. no. 3/1 which shows the description of the property & consideration for the transaction as Rs.25,000/-. This document also refers to delivery of possession by plaintiffs to the

defendants.

17. It is at this stage, apposite to refer the pleadings of the plaintiffs. In relation to this document, it is pleaded by the plaintiffs in para 5 that the document is executed by them. However, their contention is that it was a loan transaction. Fact remains that execution of the document in question bearing registration number 832/03 is admitted by the plaintiffs. This circumstance needs to be considered while considering the prima facie case.

18. The plaintiffs in order to show that they are in possession of suit property have placed on record the 7/12 extracts of suit property vide exh. 3/2. The 7/12 extract of suit property stands in the name of plaintiffs. It also appears that after the execution of alleged sale deed, the plaintiffs have raised loans on the property. It is on the basis of the entries in 7/12 extract that the plaintiffs claim their possession over suit property. Pressing on this point, the Ld. Adv. Shri. Nagarkar in support of his submission that the plaintiffs are in possession of the suit property has placed reliance on the observations made by the Hon'ble Allahabad High Court in Kamala Vs Smt. Gulabi Devi other Second Appeal 1356 of 1998 wherein the Hon'ble Allahabad High Court has observed that "The entries in revenue

record may refer to the possession of the person on the land in dispute & prima facie it may raise a presumption of title but such presumption is rebuttable. I have gone through the above case law & the observations made therein in relation to the entries in 7/12 extract are settled one & I am in full agreement with the same. However, the only observations which are sought to be relied upon cannot be made applicable unless the facts are similar.

19. The Ld. Adv. for plaintiff Shri. Nagarkar also made it a short point to argue that if at all, the alleged sale deed was in fact real & the possession was handed over, the 7/12 extract would not have stood in their name & therefore contends that the possession of suit property is with the plaintiffs. He has also drawn my attention to the fact that since the execution of the alleged sale deed, no efforts were made by the defendants to get their names mutated to the 7/12 extract.

20. Ld. Adv. Shri. Kholam representing the defendants however refuted the contentions raised by the plaintiffs. He submits that the M.E. bearing No. 1438 was made by the Circle Officer however the said entry came to be cancelled as there was encumbrance on the property. This submission finds support in the M.E. bearing registration No.832/03 which is placed on record vide Exh.18/2.

21. As such it can be said that after the deed was executed, M.E. bearing registration No.1438 had taken place in favour of defendant no. 1 but later on the same was cancelled & so it cannot be inferred that no efforts were made by the defendants to get their name mutated to the 7/12 extract of suit property.

22. At this stage, I would like to refer section 154 of Maharashtra Land Revenue Code 1966 which holds the filed in relation to agricultural lands. Section 154 of Land Revenue Code provides for intimation of transfer by registering officer, in relation to document purporting to create, assign or extinguish any title or in charge of land used for agricultural purposes or in respect of which the record of right has been prepared as registered under the Indian Registration Act, be given to the Talathi of the village in which the land is situated & to the Tahsildar in such format & at such times as may be prescribed by the Rules under the Act. The document in the case in hand is a registered sale deed. This fact cannot be disputed.

23. In view of section 154 of Land Revenue Code it is in fact the duty of the Sub Registrar/ Registering Officer to inform the transaction in question to the Talathi as well as to the Tahsildar. Thus it is not an obligation on the part of defendant, in

the case in hand, to report the transaction to the village officer or the Revenue Officer.

24. Section 149 has to be read with section 154 & conjoint reading shows that in case of acquisition otherwise than registered instrument, party has to make a written application to the Village Officer. Suffice to say that in case of registered instrument it is legal obligation on the registering authority. If the registering authority commits an error or fails in its duties, citizen like defendant cannot be blamed or made to suffer.

25. Moving further, it would not be out of place to mention that the plaintiffs apart from the entries in 7/12 extract have not placed anything on record to show their possession. No any affidavit of adjoining land holder is placed on record who would state that the plaintiffs are in possession of suit property.

26. I now move to the next grievance of the plaintiffs wherein they contend that, when the alleged sale deed took place there was no partition between them & as such sale deed mentioning a specific portion cannot be made & also there cannot be handing over of possession of suit property.

27. It is well settled that an undivided share of a co-sharer

may be a subject matter of sale but possession cannot be handed over to the vendee unless the property is partitioned. If after execution of sale deed partition does not takes place, the vendee has a right to sue for partition of property & ask for allotment to him of that, which on partition might be found to fall to the share of the coparcener whose share he had purchased.

28. In the present case, as per the averment of the plaintiffs, partition took place between them in the year 2016. i.e. when the sale deed was in existence. So once partition takes place, it results in division of lands jointly held by them, into different lots or portions & delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated & the respective shares vest in them in severalty. A partition of a property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to partition.

29. Being so the legal position, I would like to specifically mention from the perusal of M.E. bearing no. 2881 placed on record vide Exh. no. 3/7 that when the partition took place between the plaintiffs in the year 2016, plaintiff no. 1 who has executed the deed in favour of defendant no. 1 very wisely skipped away from, having any share & the partition was between

plaintiff No.2, plaintiff no 3 & plaintiff no. 4 who is the wife of plaintiff No.1.

30. The act on the part of plaintiffs to keep away plaintiff no. 1 from having any share & allotting the same to his wife i.e. plaintiff no. 4 apparently seems to be done only with a view to avoid the deed which was executed by plaintiff no. 1 in favour of defendant no. 1

31. Now, this act on the part of the plaintiffs takes me to consider the point of equitable jurisdiction. Under Order 39 of C.P.C. the jurisdiction of the Court to issue an order of temporary injunction is wholly equitable, therefore, the Court on being approached, will apart from other considerations also look to the conduct of the party invoking jurisdiction of the Court and may refuse to interfere unless his conduct is free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court is to show that, he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealing with the party against whom he was seeking the relief.

32. In the case in hand, even for a while assuming that

the possession of the suit property is with the plaintiff yet the conduct of the plaintiff in raising the loan after the execution of deed bearing registration no. 832/03, to caper away plaintiff no. 1 having any share in the said property with intent to avoid the deed bearing registration no. 832/03 disentitles them from granting an equitable relief. Thus taking into consideration the above things, I answer point 1 to 3 in the negative and proceed to pass following order.

Order

Application is rejected.

Daund

Date:- 24/07/2018

(S.D.Awasekar)

Jt.Civil Judge Junior Division
Daund