

COMMON ORDER BELOW EXH. 5 AND 19
(Passed on 3rd February 2024)

This is the application filed by plaintiff for temporary injunction restraining defendant from causing obstruction to the peaceful possession of the suit property and causing obstruction from cutting of sugarcane owned by plaintiff.

2. In nutshell case of the plaintiff -

Agricultural property at Mauje Khorwadi, Tal, Daund, Dist. Pune gat no. 350/5, total area 2H 83 R the four boundaries are as follows,

Towards East - Canal

Towards West - Gat no. 328, 326, 329

Towards South - Gat No. 282, 281, 280, 279

Toward North - Gat no. 352

Out of it 1H 23 R executed in the name of plaintiff no. 1 by way of will deed no. 984/2021 and 1H 60 R in the name of plaintiff no. 2.

(The above said property is referred as suit property for the sake of brevity).

3. Thakubai Aaba Kale was owner and in possession of suit property. Thakubai Aaba Kale has executed registered will deed in the name of plaintiff. On the same day possession receipt given to the plaintiff. In such way plaintiff is in possession of suit property. House of plaintiff is situated there and plaintiff has taken crops like sugarcane, bajara etc. Since the life time of Thakubai plaintiff is in

possession of suit property. Defendant has no concern to the suit property because deceased Thakubai Kale was belongs to pardhi community and defendant no. 1 belongs to Ramoshi community and defendant no. 2 belongs to Kaikadi. Therefore, no close relation between them. Defendant behind the back of plaintiff by misleading the court has taken the order of probate. After knowing said fact plaintiff filed civil application no.47/2023 for cancellation of probate. The said matter is pending in Baramati Court. Will deed executed by Thakubai Kale in favour of plaintiff is final and legal one. On the basis of will deed no. 2463/2016 defendant has no right in the suit property. On the basis of illegal will deed defendant have recorded their name in revenue record. On the basis of said entry defendant are trying to obstruct possession of plaintiff. Therefore, plaintiff filed an application for temporary injunction restraining defendant from causing obstruction to the peaceful possession in the suit property and causing obstruction from cutting of sugarcane owned by plaintiff.

4. Defendant appeared in the matter and filed their written statement and say at Exh. 17. On the application below Exh. 19 they filed their say at Exh.23. They opposed the application and submitted that, gat no. 350/5 at Mauje Khorwadi total area 2H 83 R is owned by deceased Thakubai Aaba Kale. Thakubai Kale has executed will deed in the name of defendant by way of will deed no. 2463/2016. Defendant no.1 has given 2H 42 R towards Western side and defendant no. 2 has given 0041 R towards eastern side of the suit

property. As per the order of Sr. Division Baramati in Civil Misc application no. 164/2021 probate certificate is granted in the name of defendant. On the basis of probate certificate name of defendant are recorded in the suit property by way of mutation entry no. 3575. Will deed no. 984/2021 executed in the name of plaintiff was false and suspicious. Therefore, plaintiff gets no right on the basis of said will deed. By taking disadvantage of the mental and physical condition of Thakubai plaintiff has made possession receipt. Name of defendant is recorded in the 7/12 extract of suit property. They have taken sugarcane crop. Plaintiff causing obstruction to them and causing damage to their crops. Hence, prayed for rejection of the application.

5. Perused the record, on the basis of rival contention following points arise for my consideration and I have recorded my findings there on for the reasons given below.

Sr. No.	Points		Findings
1.	Whether plaintiff have prima facie case in their favour?	...	Negative
2.	Does plaintiff prove that balance of convenience lies in their favour?	...	Negative
3.	Does plaintiff prove that they will suffer from irreparable loss, if temporary injunction as sought for is not granted?	...	Negative
4.	What order?	...	As per final order

REASONS

6. To support their argument plaintiff relied upon copy of 7/12 extract of gat no. 350/5, copy of will deed no. 984/2021, copy of possession receipt, photographs, copy of application to Tahsildar, copy of application no. 47/2023, copy of order in RTS No. 254/2023. On the other hand, defendant relied upon copy of 7/12 extract of gat no.350/5, copy of application no. 47/2023, copy of will deed 2463/2016, copy of probate certificate, copy of order in Misc application no.164/2021, copy of affidavit of Dharamraj Jadhav, and Navanath Jadhav, copy of application to Tahsildar, copy of application to sugar factory Alegaon.

AS TO POINT NO. 1 to 3:

7. As all of these points are interlinked with each other, I have taken them together for discussion to avoid repetition.

8. Plaintiff have argued that since 17/3/2021 they are in possession of suit property on the basis of will deed and on the basis of possession receipt. They have taken sugarcane crop in the suit property. Now crop is matured. defendant on the basis of illegal probate recorded their name in 7/12 of the suit property. Prior to 3 months name of defendant are entered in the suit property. By taking advantage of entry in the 7/12 extract defendant trying to obstruct the peaceful possession of plaintiff. If, defendant is not restrain then it will cause loss to the plaintiff. Therefore, plaintiff prayed for restraining defendant from causing obstruction to the peaceful possession of the suit property and causing obstruction from cutting

of sugarcane owned by plaintiff.

9. To support their contention plaintiff relied upon copy of 7/12 extract. On perusal of it appears that in the year 2017-2019 suit property is in the name of defendant. On perusal of will deed it appears that Thakubai Aaba Kale has executed will deed of 0.23 R land towards southern side and 1H 60 R land towards northern side of gat no. 350/5 in the name of plaintiff no. 1 and 2 . On perusal of possession receipt it appears that Thakubai Aaba Kale has made it in the name of plaintiff in respect of suit property. On perusal of photograph it appears the crops of sugarcane. On perusal of Misc. application no. 47/2023 it appears that application for revocation of probate dated on 13/4/2022 is filed by plaintiff against defendant. On perusal of copy of RTS appeal it appears that order of certifying ferfar no. 3575 was cancelled.

10. On the other hand, defendant argued that title follows possession. On the basis of probate their name were recorded in the 7/12 extract. The sugarcane is in their possession. Accordingly, entry of sugarcane is recorded in 7/12 extract. Until will deed is proved it cannot be said that plaintiff are in possession of suit property. As sugarcane belongs to them. No question arises for obstructing the plaintiff therefore, prayed for rejection of application.

11. To support their contention they relied upon copy of 7/12 extract of gat no. 350/5. On perusal of it appears in the name of defendant for the year 2023-2024 . On perusal of misc application no. 47/2023 it appears that application for revocation of probate

dated on 13/4/2022 is filed by plaintiff against defendant. On perusal of will deed it appears Thakubai Aaba Kale has executed it in the name of defendant. On perusal of probate certificate and order in M.A. No.164/2021, it appears in the name of defendant. On perusal of affidavit of Dharmraj Jadhav, and Navanath Jadhav it appears that they have stated that suit property and sugarcane crop are of the defendant. On perusal copy of application to Tahsildar, it appears that defendant applied for police protection due to obstruction by the pardhi people. On perusal of application to sugar factory it appears that defendant applied for entry and permission for cutting the sugarcane.

12. Heard both the side. It is not disputed that suit property was in the name of Thakubai. However, plaintiff came with the case that as per will deed 984/2021 dated 17/03/2021 they are in possession of the suit property. Also argued that will executed by deceased Thakubai in favour of plaintiff is last will. Therefore, will executed by deceased in favour of defendant is revoked. On the other hand defendant came with the case that as per will deed no. 2463/2016. Their names are entered in revenue record. Accordingly they are in possession of the suit property and the sugarcane is owned by them. In the case in hand plaintiff and defendant are challenging the validity and genuineness of the will alleged to have been executed by deceased in their favour. Therefore, whether will deed executed in favour of plaintiff or defendant are valid and genuine and whether will executed by deceased Thakubai in favour

of plaintiff is last will or not. will be consider after leading evidence and at the time of trial. Therefore, whether will deed executed by deceased in favour of plaintiff and defendant are valid and genuine will not be taken into consideration at this stage.

13. At the time of deciding the present application it is necessary to consider whether plaintiff proved their prima facie case, balance of convenience, and irreparable loss lies in their favour. While deciding prima facie case it is burden on the plaintiff to prove his prima facie case by adducing document in support of their claim. It is the contention of plaintiff that they are in possession of suit property on the basis of will deed and on the basis of possession receipt. By taking advantage of entry in the 7/12 extract defendant trying to obstruct the peaceful possession of plaintiff. Plaintiff came with the relief of restraining defendant from causing obstruction to their peaceful possession in the suit property. In order to obstruct the defendant plaintiff must prove their lawful possession in the suit property. Possession in the suit property entitles plaintiff to the relief of injunction therefore, the burden is on the plaintiff to prove their prima facie case. To prove the said fact except possession receipt plaintiff have not brought anything on record to show their possession in the suit property. Prima facie merely on the basis of possession receipt it cannot be said that plaintiff are in lawful or in settled possession of the suit property.

14. On the contrary defendant argued that they are in possession of the suit property. For the sake of the discussion if it is

considered that the mutation entry on the basis of which name of defendant are recorded is cancelled by the order of SDO. However, defendant filed on record copy of appeal preferred against the order of SDO. Therefore, prima facie it appears that the matter is subjudice. 7/12 extract filed on record shows the possession of defendant in the suit property for the Year 2017-2019. Therefore, the 7/12 extract and affidavit of Dharmraj Jadhav, Navnath Jadhav prima facie shows that suit property is in possession of defendant and there is sugarcane crop owned by them. Therefore, considering the documents on record filed by plaintiff prima facie there is nothing on record to prove the possession of plaintiff. In such circumstances, I am not of the opinion that plaintiff have prima facie case in their favour.

15. While deciding irreparable loss and balance of convenience, it is necessary to consider that, there is remedy open to applicant by which he can protect himself from the consequences of apprehended injunction. If injunction as prayed is not granted. Further, while deciding balance of convenience it is necessary to weigh one need against another and determine where the balance of convenience lies.

16. In the case in hand plaintiff came with the relief that defendant causing obstruction to their peaceful possession and cutting the sugarcane in the suit property. Therefore, they be restrain from creating third party interest or not to alienate the suit property and not to obstruct their peaceful possession. As already discussed above plaintiff failed to prove their prima facie possession in the suit

property. Also failed to prove the sugarcane in the suit property is owned by them. As plaintiff failed to prove their prima facie possession in the suit property and sugarcane owned by them. As such, relief claimed cannot be granted. In view of discussion made above, plaintiff failed to prove B.O.C lies in their favour and irreparable loss will cause to them if injunction on prayed is not granted to them. Hence I answer point no. 1 to 3 in the negative.

AS TO POINT NO. 4:

17. Plaintiff failed to prove their prima facie case, balance of convenience lies in their favour and irreparable loss will cause to them if injunction as sought is not granted to them. Therefore, they are not entitled to the relief claimed. In answer to point no. 4, I pass following order.

ORDER

- 1) The application at Exh. 5 and 19 are rejected.

sd/-

(S. D. Mukkanwar)

Date : 03/02/2024

2nd Jt. Civil Judge Junior Division,
Daund, Dist – Pune