

ORDER BELOW EXH. 12

The present application is filed for grant of temporary injunction under Order 39 Rule 1 of the Civil Procedure Code restraining defendant nos. 1,2,4 to 7 from construction over the suit property till the final disposal of the suit.

The case of the plaintiff in brief is as follows:-

2 . The plaintiff is the owner and possessor of the properties situated at Khambewadi, Taluka-Khalapur, District- Raigad which are specifically mentioned in para no.1 of the application (Hereinafter referred to as "suit property" for sake of brevity) out of which survey no.5, hissa no.5/D admeasuring 42 Ares is the self-acquired property of the plaintiff. The plaintiff is illiterate and old. The defendants took advantage of his illiteracy and by misrepresentation and fraud compelled plaintiff to execute partition deed dated 09.08.2011. Defendant no.7 obtained no objection from gram panchayat on 04.08.2016 and started construction over survey no.5, hissa no.5/D. The plaintiff filed complaint before Khalapur Police. The police recorded statement of defendant no.7 in which he accepted that the construction over survey no.5, hissa no.5/D is illegal and he will stop the construction. The plaintiff has filed complaint application dated 01.11.2017 before Tahsildar, Khalapur against defendant no.7. On 06.04.2018, Tahsildar Khalapur rejected the objection of the plaintiff and directed him to file case in Court. On the basis of partition deed, Defendant nos.1 to 7 along with the revenue authorities made mutation entry no.741 and 7/12 extract of survey no.5, hissa no.5/D without giving vardi notice to the plaintiff. The plaintiff made an application to Talathi, Umbre for the

copy of vardi notice. The Talathi replied vide letter dated 24.08.2018 that he will provide the copy of the vardi notice when it is available. Defendant no.7 started construction over survey no.5, hissa no.5/D on 20.08.2018. Defendant nos.1,2,4 to 6 has threatened the plaintiff about construction over the suit property. Hence, he prayed to grant the application.

3. Defendant nos.1 to 7 filed reply vide Exh. 30 and denied the contents in *toto*. The defendants contended that, the mutation entry no.642 is entered on 24.10.2011 and the vardi notice is served on the plaintiff. Therefore, Plaintiff had information of the partition deed prior to 09.08.2011. The plaintiff averred that defendant no.7 is constructing over survey no.5, hissa no.5/D and thereby he is admitting the possession of defendant no.7 over the suit property at survey no.5, hissa no.5/D.

4. The defendants contended that the suit property is partitioned by executing registered partition deed dated 09.08.2011. The property at survey no.5, hissa no.5/D is admeasuring 0-42-0 Hectares and Ares out of which 0-01-0 Hectares and Ares area is the share of defendant no.7. The map stating the partitioned share is attached along with the partition deed which contains the signatures of plaintiff and defendants. The property at survey no.5, hissa no.5/D admeasuring 0-36-0 Hectares Ares is the share of the plaintiff and the remaining is partitioned among the defendants. The 7/12 extract of property at survey no.5, hissa no.5/D shows that there is house on area admeasuring 0-05-0. Hence, there was already construction of house on the property

at survey no.5, hissa no.5/D. The said property is joint family property of plaintiff and defendants. The owner Shivram Buvaji Vichare had partitioned survey no.23/1+2A/B/C and 27/2 between plaintiff and defendant nos.1 to 3 and 7. Accordingly, mutation entry no.120 was made. The same partitioned properties are entered in mutation entry no. 642 without any modification. The 7/12 extract of the property at survey no.5, hissa no.5/D contains entries of 5 houses since the year 1959-1960. This was not objected by the plaintiff. The construction of house over the property at survey no.5, hissa no.5/D is over in the year 2016 and defendant no.7 is the owner of the land on which the house is build. Therefore, the mutation entries no.120, 265 and 277 shows that the plaintiff had the knowledge of the partition. The possession of the plaintiff is not prima facie proved. Therefore, the defendants will suffer irreparable loss if the application is granted. Hence, the defendants prayed that the application be rejected with costs.

5. The learned advocate for the plaintiff argued that the defendants have taken advantage of the old age and illiteracy of the plaintiff and made him to sign the partition deed and on that basis they are constructing over the suit property. The boundaries are not mentioned in the partition deed. Therefore, they are taking advantage of the wrong boundaries and constructing over the suit property. The plaintiff will suffer irreparable loss if the injunction is not granted and the balance of convenience is in his favour. Hence, he prayed to allow the application. The learned advocate for the defendants argued that the construction is over in the year 2016. The mutation entry are made in 2011 relating to the partition deed. The plaintiff had knowledge of the partition. The plaintiff is not in possession. They will suffer irreparable

loss if the injunction is granted. Hence, he prayed to reject the application.

6 . Perused application and say. Heard learned advocate for the plaintiff Shri. A.B.Deskar and learned advocate for the defendants Shri.S.R.Chogale at length. Following point arose for the determination and findings thereon alongwith reasons are as under:

Sr. No.	Points		Findings
1.	Whether the Plaintiff made out prima facie case?	..	No.
2.	Whether plaintiff proves that balance of convenience lies in his favour?	..	No.
3.	Whether plaintiff proves that he will suffer irreparable loss and hardship ?	..	No.
4.	What order?	..	Application is rejected.

REASONS

7 . In support of the contentions, the plaintiff has relied upon following documents –

Statement dated 08/02/2017, copy of mutation entry no.741, copy of 7/12 extract, copy of letter dated 24/08/2018, copy of mutation entry no.642, copy of complaint application dated 20/08/2018.

8 . On the other hand, the defendant in support of his contention has filed following documents –

Copy of 7/12 extract of s.no.5/5D of the year 1956-57, copy of 7/12 extract of suit properties, copies of mutation entries of suit properties, copy of form no.8-A, xerox copy of letter dated 23/10/2017 of Groupgrampanchayat Umbare, xerox copy of letter dated 04/02/2017 written to Tahsildar, Khalapur, copies of assessment extract, copy of application dated 26/10/2018, certified copy of Judgment and order dated 16/07/2018 passed by Tahsildar,Khalapur.

POINT NOS. 1 to 3 :-

9. Point nos.1 to 3 are inter-connected. Hence, they are discussed together for convenience.

10 . Considering the submissions, documents and photographs on record, it is observed that some construction is being carried out over the property. On perusal of 7/12 extract of survey no.5, hissa no.5/D dated 30.07.2018, the name of plaintiff and the defendants can be seen in the column of possessor. The plaintiff is the possessor of area admeasuring 0-36-0 Hectares Ares whereas the rest of property is divided among defendants. This shows that there is partition of survey no.5, hissa no.5/D and both plaintiff and defendants are possessors of the said land. But the plaintiff is claiming whole of sruvey no.5, hissa no.5/D to himself and denying possession of defendants. There is mention of house in the area admeasuring 0-05-0 Hectares Ares. The

plaintiff averred that the construction is being carried out in his share of the suit property whereas the defendants contended that they are carrying out construction in the property which is in their possession. At this stage, it is not clear on whose property there is construction. There is dispute over the boundaries of the suit property. The question of boundaries is the matter of trial. Also, whether the partition deed is null and void is a matter of trial. On perusal of letter dated 23.01.2017 of Group Gram Panchayat, Umbare, it shows that plaintiff has filed objection to construction of defendant no.7 to Group Gram Panchayat, Umbare on 19.01.2017. Also, in letter dated 04.02.2017 to Tahsildar, the plaintiff informed about the constructed house over survey no.5, hissa no.5/D of defendant no.7. Hence, he had knowledge about the construction of house since January 2017. But in the present application, the plaintiff averred that defendant no.7 started construction of house on 20.08.2018. Moreover, defendant no.7 admitted that the construction of the house is over. The plaintiff is suppressing material facts from the Court. It seems that the plaintiff did not come to the Court with clean hands.

11. It should not be forgotten that, grant of injunction is a discretionary power and such power must be exercised in accordance with sound judicial principles. It is an equitable relief and even if all the above conditions are satisfied there may be other circumstances leading to a refusal to grant such injunction. Thus, a relief of injunction may be refused on the ground of delay latches or acquiescence or where the applicant has not come with clean hands or has suppressed material facts or where monetary compensation is adequate relief. Power to grant

injunction is extra ordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as a matter of right or course.

12. Considering the above discussion and also that the plaintiff has not prima facie proved that construction of house is in his share of survey no.5, hissa no.5/D, plaintiff failed to prove prima facie case.

13. In the case in hand in my opinion this is not fit case to grant equitable relief of temporary injunction, particularly where the plaintiff has not come to the Court with clean hands. Hence, the prima-facie case is not in favour of the plaintiff, the balance of convenience is also not in favour of the plaintiff. The construction of house is over. Therefore, the plaintiff would not suffer any loss if order of temporary injunction is not granted in his favour. Accordingly, I answer point no. 1 to 3 in the “Negative”.

POINT NO. 4 :-

14. In the light of above discussion, the plaintiff has failed to prove the prima facie case. In the result, I pass the following order.

ORDER

1. The application is rejected.
2. The ad interim injunction is vacated.
3. Costs shall follow the event.

Khalapur
Date : 28.11.2018

(S.M.Gade)
Civil Judge, J.D., Khalapur