

Order below Exh. 05 R.C.S.No. 08/2021.

This is an application filed by plaintiff under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

2. Description of the land:-

The property bearing

1. Survey No. 43 Hissa No.1/4 H 0.02.00 R,

2. Survey No. 43 Hissa No.1/8 H 0.08.00 R

situated at village Tirlot, Tal. Deogad, Dist. Sindhudurg, are the subject matter of the present application. Hence, hereinafter referred as “suit property”.

3. The plaintiffs' application in short is that

Suit property is ancestral tenancy property of the plaintiff and defendants No. 5 to 7. As per tenancy proceeding suit property was sold in favour of the plaintiff's family. Accordingly, the plaintiff's family become owner. Suit for partition bearing R.C.S No. 23/2015 was filed between the plaintiff and defendants No. 5 to 7 and suit property was partitioned. Accordingly, the plaintiff and defendants No. 5 to 7 are having cultivation over suit property. The defendants No. 1 to 4 are never having any rights over the suit property. They are having land adjacent to suit property. Therefore, they are obstructing the plaintiff's possession on account of cultivation. They are threatening the plaintiff's family and obstructing possession. In January 2021, the defendants No. 1 to 4 assaulted the plaintiff and obstructed his possession over the suit property. The plaintiff has objected the acts

of defendant No. 1 to 4, but in vain. Therefore, he has constrained to filed the present suit and the present application.

4. The defendant No.4 has resisted this application by filing his say (Exh.24). His say relevant point of controversy in short is that;

Suit property was originated from original Survey No. 43 (285) Hissa No. 1. Survey No. 43 (285) Hissa No. 1 had H 01-00-4 area. Thereafter, it was divided into Hissa No. 1/1 to 1/16. Out of those, Hissa No. 1/3 and Hissa No. 1/11 were recorded in the name of defendant No. 4's paternal uncle Sakharam Narayan Ghadi and after his demise it was recorded in the name of his elder son Punaji @ Rushi Sakharam Ghadi (Defendant No. 1). Narayan was common ancestor of the defendants No. 1 to 4. Narayan had Sakharam and Bhanu son. Sakharam has defendant No. 1, 2 and 3 heirs. Bhanu has Chandrakant and defendant No. 4 heirs. Bhanu's daughter Snehalata is no more. Though, these two Hissa recorded in the name of Punaji @ Rushi, he is now living at village Goval and doing business of grinding. Defendants No. 2 to 4 have been cultivating these two hissa and getting Nachani crops. Thus, Hissa No. 1/3 and Hissa No. 1/11 are ancestral of the defendants and since long year they have been cultivating it. Therefore, question of obstruction to the plaintiff possession by the defendants does not arise. Hence, prayed to reject this application.

5. From inter alia pleadings of the parties, following points arises for the determination. The findings against them as follows with reasons discussed below it.

No.	<u>Points</u>	<u>Findings</u>
1)	Whether the plaintiff is having prima facie case ?	Yes.
2)	Whether balance of convenience is in favour of plaintiff?	Yes.
3)	Whether irreparable loss will cause to the plaintiff in the event of rejection of interim injunction as sought ?	Yes.
4)	Is he entitled for the relief of interim injunction as sought ?	Yes.
5)	What Order ?	As per final order

:: REASONS ::

As to all points:-

6. Prior to entering into the merits and demerits of this case, it is pertinent to note that three parameters which guides the courts while granting or refusing to grant this discretionary relief of temporary injunction are well settled from time to time in the series of catena of judgments of Hon'ble High Courts and Hon'ble Apex Court. Those are, prima facie case, balance of convenience and irreparable loss. Stepping ahead this discretionary relief is also based on well known maxim "That he who seeks equity, must do equity, and must come with clean hands". Here, law do not expects the decision on whole merit or demerit of the main suit while deciding this interim application. On the contrary, the party who seeks the relief of temporary injunction must show that he has some debatable question at main trial and there is every possibility of infringement of his rights at the hands of other party till the decision of suit on merit. Therefore, interference of court is necessary. Only after this

establishment, the court can grant this discretionary relief in favour of that party for the protection of his rights till the decision of suit.

7. By keeping well in mind the above parameters. In this case to ascertain in whose favour the prima facie as well as balance of convenience and irreparable loss lies let me turn to the rival contention of both the parties and documentary evidence adduced by them to establish those parameters.

8. Heard, the learned Adv. Shir. A.M. Mangaonkar for the plaintiff and the learned Adv. Shri. M.S. Kale for the defendants No. 1 to 4. The learned Adv. Shir. A.M. Mangaonkar submitted suit property is ancestral of the plaintiff and defendant No.5 to 7. It has been owned under tenancy proceeding. Accordingly, the plaintiff and defendants No. 5 to 7 are owner and possessor of suit property. The defendants No. 1 to 4 are adjacent land owner of suit property, trying to obstruct the plaintiff's possession.

9. Per contra, it is submitted by the learned Adv. Shri. M.S. Kale suit property is not been divided by metes and bounds. As per Gat book map, it seems that Survey No. 43 is not divided. Therefore, presumption can be drawn that along with the plaintiff the defendants No.1 to 4 are having possession over suit property. Therefore, it creates doubt on the possession of the plaintiff. According to him, when there is doubt on the possession, the relief of injunction cannot be granted.

10. In order to prove possession over the suit property, the plaintiff has relied on 7/12 extract of suit property (Exh.6 and 7), mutation entry No.2608 (Exh.8). On going through these documents, it appears that as per mutation entry No.2608 names of the plaintiff and defendants No.5 to 7 are recorded in suit property as owner and possessor.

11. On the contrary, the defendant No.4 has relied old on 7/12 extract of Survey No.43 (285) Hissa No.1/3 and Survey No.43 (285) Hissa No.1/11. As per these 7/12 extracts, it appears that name of defendants No. 1 to 4 predecessor Sakharam Narayan Ghadi was recorded and after him, name of defendant No.1 is recorded as possessor and owner. Lastly, the defendant No.4 has relied on Gat book Map of Survey No.43 (285) (Exh.26/2). On going through the same, it appears that Survey No.43 (285) Hissa No.1/1 is not been divided in to Hissa No. 1/1 to 1/16.

12. Though, aforesaid Gat book Map speaks that Survey No.43 (285) Hissa No.1/1 is not been divided, he is the defendant No.4 in his say specifically admitted that it has been divided in to Hissa No.1/1 to 1/16. Accordingly, Hissa No.1/3 and 1/11 recorded in his paternal uncle Sakharam Narayan Ghadi and defendants No. 2 to 4 have been cultivating the same. Moreover, whether Gat book map is prepared before or after sub division of Hissa No.1/1 is not been clearly come on record. Even though at one moment, it assume that Survey No.43 (285) Hissa No.1/1 is not been sub divided in to Hissa No.1/1 to 1/16. It is not case of the defendant No.4 that said sub-division is illegal and prepared only for documentary purpose.

Further more, it is not case of the defendant No.4 that possession over suit property is not been divided.

13. Thus, as per the above discussion and 7/12 extracts (Exh.6 and 7) and 7/12 extract (Exh.27), prima facie it seems that the plaintiff and defendants No.5 to 7 are having possession over the suit property and defendants No.1 to 4 are having possession over Survey No.43 Hissa No.1/3 and 1/11. Therefore, balance of convenience lies in favour of the plaintiff and defendants No. 5 to 7. In such circumstances, irreparable loss will cause to the plaintiff and defendants No. 5 to 7, if temporary injunction is refused. Hence, by answering above all points under discussion, following order is passed.

ORDER

1. The application at Exh. 5 is allowed.
2. The defendants No.1 to 4 by way of temporary injunction are hereby restrained from causing obstruction to the possession of the plaintiff and defendants No.4 to 7 over suit property till final decision of the present suit.
3. Cost in main cause.

Place :Deogad

Date :07/01/2022

(B.R.Patil)

Civil Judge, J.D.,Deogad