

MHSI100003042017



-: Regular Civil Suit No.36 of 2017 :-

-: Order Below Exh. No. 5 :-

The Plaintiff have filed the present suit for cancellation of sale deeds and perpetual injunction wherein he have filed the present application for temporary injunction under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 (Herein after referred as 'C.P.C.' for the sake of brevity).

02. It is contended that, the landed property situated at village Khanyale, Taluka Dodamarg i.e. survey No. 570A, 2-08-00 H.R. is the subject matter of the suit (hereinafter referred as 'suit property'). That the suit property is ancestral property of the Plaintiff and name of Plaintiff is recorded over its 7/12 extract. That the Defendant No. 1 has no concern at all with the suit property. However, on request of Defendant No. 1, late husband of Plaintiff had given him 5 gunthas of area in the suit property to built his house and thus there is house of Defendant No. 1 bearing house No. 228 in that area of 5 gunthas in the suit property. It is contended that, apart from that 5 gunthas of area, Plaintiff is in possession of rest of the area in the suit property and she has planted trees such as cashew, mango, jackfruit, coconut, etc. in it. However, on 05.06.2017, when Plaintiff visited the suit property, Defendant No. 1 obstructed the Plaintiff from proceeding by saying that he has house in the suit property

and hence he will possess entire suit property. He threatened the Plaintiff of dire consequences if Plaintiff enters suit property. Hence it is prayed that, the Defendant be restrained from obstructing the Plaintiff from entering the suit property apart from 5 gunthas of area given to Defendant No. 1 for his house. Hence it is prayed that the Application be allowed.

03. Defendant No. 1 filed his Written Statement cum say at EXH 21 and opposed the Application. It is contended that the contents of the application is false. It is contended that, since last 50 years the Defendant No. 1 and his family is in possession of total area of 1-20-00 H. R. in the suit property as tenant which is in name of Plaintiff. That, the Defendant owns a house No. 228 in suit property and resides with his family. Defendant No. 1 and his family has planted several trees such as cashew, jackfruit, coconut, banana, bamboo, etc. and are dependant on its income. So also, Defendant No. 1 carries out rice, Ragi (नाचणी), etc. cultivation in the suit property. It is contended that Plaintiff has never visited the suit property for cultivation. That the Defendant No. 1 always used to give Khand (खंड) to late husband of Plaintiff i.e. Abdul Rahiman Chandkhan and there is agreement dated 23.07.1987 in respect of the same. As such, Defendant No. 1 has become owner by adverse possession in the suit property. That the Defendants have instituted tenancy proceedings bearing No. 10/2017 in respect of suit property. Hence, injunction as prayed cannot be granted against the Defendant No. 1. If the injunction is granted, then it would cause irreparable loss to the

Defendant No. 1. Hence it is prayed that the Application be rejected.

04. Perused the application and say. Perused the document filed on record by both the parties. Heard Ld. Advocate for the Plaintiff and Defendant. Considering the rival contentions of both the parties, following points are arise for my determination and its findings alongwith the reasons are as follows :-

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the Plaintiff has made-out prima-facie case ?	No.
2.	Whether balance of convenience is in favour of the Plaintiff ?	No.
3.	Whether the Plaintiff will suffer irreparable loss in the event of refusal of temporary injunction ?	No.
4.	What Order ?	Application is rejected.

-: **REASONS** :-

05. In support of her case, Plaintiff relied upon 7/12 extract of suit property at EXH 6, certified copy of sale deed dated 15.11.1997 at EXH 4/2, certified copy of sale deed dated 20.05.1998 at EXH 4/3, mutation entry No. 705 at EXH 7, mutation entry No. 692 at EXH 8, power of attorney at EXH 4/6.

Defendant No. 1 relied upon documents such as 7/12 extract of survey No. 57 hissa no. 0 at EXH 24, 7/12 extract of survey No. 57 hissa no. 0A at EXH 25, 7/12 extract of survey No. 57 hissa no. 0B at EXH 26, 7/12 extract of survey No. 57 hissa no. 0C at EXH 27, 8 A extract of House No. 228 at EXH 28, Graampanchayat Bodade resolution dated 28.06.2017 at EXH 23/6, notice in tenancy case No. 10/2017 at EXH 29, copy of death certificate of wife of Defendant No. 1 at EXH 23/8, copy of affidavit of Shri Narayan Ladu Dalvi at EXH 23/9, agreement executed by Abdul Rahiman Chandkhan in favour of wife of Defendant No. 1 at EXH 23/10. Copy of 7/12 extract showing Defendant No. 1 and his family as Tenants in the suit property at EXH 58/1.

As to Points No. 1, 2 and 3 :-

06. It is argued on behalf of the Plaintiff that the suit property is ancestral property of the Plaintiff. That, 5 gunthas out of total area in the suit property has been given by the husband of Plaintiff to Defendant No. 1 for construction of house. Apart from that area, Plaintiff is in possession of rest of area in the suit property. It is argued that, when Plaintiff tried to enter the suit property, Defendant no. 1 obstructed the Plaintiff and her agents to enter the suit property stating that Defendant no. 1 is in possession of entire area in the suit property. Hence, it is prayed that the Defendant no. 1 be restrains from obstructing the Plaintiff from entering the suit property.

07. On the other hand, it is argued on behalf of the Defendant No. 1 that, Defendant No. 1 and his family is in possession of area of 1-20-00 H. R. in the suit property since last 50 years as tenants. He has constructed house bearing No. 228 over that area and resides alongwith his family in the same. It is further argued that the Defendant No. 1 has planted several trees such as cashew, jackfruit, coconut, banana, bamboo, etc. and are dependantant on its income. So also, Defendant No. 1 carries out rice, Ragi, etc. cultivation in the suit property. Defendant No. 1 always used to give Khand (खंड) to late husband of Plaintiff i.e. Abdul Rahiman Chandkhan and there is agreement dated 23.07.1987 in respect of the same. Hence it is prayed that the Application being false and frivolous, be rejected.

08. At this juncture it can be seen that the Plaintiff claims to be owner and in possession of entire suit property except for 5 gunthas which according to Plaintiff is given to Defendant No. 1 for his house. In support of her contention, Plaintiff has filed on record the 7/12 extract of suit property at EXH 6. On perusal of the same it can be seen that, Plaintiff appears to be in possession of area of 1-20-00 H.R. in the suit property and Managing Director Chairman of Agro Field Gare Farm Pvt. Ltd., Mumbai appears to be in possession of area of 0-88-0 H.R. in the suit property. Plaintiff has filed on record the mutation entries No. 705 and 692 at EXH 7 and 8 respectively. On perusal of Mutation entry No. 692 at EXH 8, it appears that the, name of Sanjay Raghuvir Gavas was entered over record of the area of 0-

88-0 H.R. of the suit property being purchaser of that area vide sale deed dated 15.11.1997. On perusal of mutation entry No. 705 at EXH 7, it appears that, name of Managing Director Chairman of Agro Field Gare Farm Pvt. Ltd., Mumbai is entered over the revenue record of the area of 0-88-0 H.R. of the suit property being purchaser of that area vide sale deed dated 21.05.1998. From this it appears that the Plaintiff is not in possession of entire area of the suit property.

09. Further, it can be seen that Defendant No. 1 is claiming to be in possession of the area of 1-20-0 H.R. in the suit property as its tenant since last 50 years. The 7/12 extract of suit property at EXH 6 filed by Plaintiff does not show the name of Defendant No. 1 as tenant. However, Defendant No. 1 filed on record the copy of latest 7/12 extract of suit property wherein Defendant No. 1 and his family are shown to be tenant in the suit property. It can further be seen that the Defendant No. 1 has filed on record the assessment extract of house No. 228 at EXH 28. On perusal of the same name of Defendant No. 1 has been entered to be its owner.

10. At this juncture it can be seen that the 7/12 extracts filed on record by the Plaintiff as well as the Defendant No. 1 does not support the contention of the Plaintiff. It is settled law that the 7/12 extract is not the document of ownership. However, in absence of the other material, 7/12 extract assumes considerable weightage. Further that, whether Plaintiff is in possession of entire suit property apart from area of 5 gunthas

given to the Defendant No. 1 as contended by the Plaintiff, will be decided after the trial. However, at this stage the relief of injunction cannot be granted to the Plaintiff as prayed. Hence, considering the entire material on record, the Plaintiff does not have prima-facie case. As observed above, the documents does not support the Plaintiff's case and the name of Defendant No. 1 No. 1 has been entered over the record as tenant. Hence balance of convenience lies in his favour. So also, there is nothing on record that the rejection of prayer of injunction would cause irreparable loss to the Plaintiff. Hence, rejection of injunction would not cause any irreparable loss to the Plaintiff. Considering the above, I answer points No. 1 to 3 in the '**Negative**'.

As to Point No. 4 :-

11. From the discussion made in above points, it is clear that the Plaintiff has no prima-facie case and balance of convenience. So also, rejection of injunction would not cause any irreparable loss to the Plaintiff. Hence, the Application is liable to be rejected. Accordingly in answer to this point, I proceed to pass the following:

:: ORDER ::

Application is rejected with costs.

(Dictated and pronounced in open Court)

Place : Dodamarg.
Date : 04/07/2022.

(Y. P. Bavkar)
Civil Judge (Junior Division)
Dodamarg.