

ORDER BELOW EXH.14 IN REGULAR CIVIL SUIT NO.335/2024
(Krushna Ramchandra Hirawadekar v.s. Jamila Babaso Mujawar)
CNR NO. MHSN050021442024
(E-file)

The present application is filed by the plaintiff for temporary injunction thereby restraining defendant no.1 from creating any third party interest over dispute property till final decision of the suit. It is opposed by defendant no. 1 vide filing say at Exh. 53 and prayed for its rejection with costs amount.

2. Heard Ld. Counsel Shri. S.M.Upadhey for plaintiff and Ld. Counsel Shri.S.S.Patil for defendant no. 1.

3. Perused record, from it following points arose for my determination to which I have recorded my finding thereon with the reasons stated thereunder :-

Sr. No.	POINTS	FINDINGS
1.	Whether plaintiff prove that prima-facie case in his favour ?	In the negative.
2.	Whether plaintiff prove that balance of convenience in his favour ?	In the negative.
3.	Whether plaintiff prove that irreparable loss would be caused to him in case prayer for injunction is declined ?	In the negative.
4.	What Order ?	..As per final order

-REASONS-

AS TO POINTS NO.1 & 2 :-

4. These points are interconnected with each other thereby they are taken up simultaneously for discussion and for

avoidance of repetition. In order to show prima facie case and balance of convenience in favour of plaintiff, he relied on documents filed alongwith document list Exh. 4.

5. On perusal of plaint and documents relied by parties, it reveals that 23.19 R out of total admeasuring area 1H 48R of Gat No. 193/2 situated at Shirala, Tal.- Shirala, Dist.- Sangli is involved in the suit. This property is hereinafter referred as “suit property”.

6. The main suit is filed by plaintiff for perpetual injunction, cancellation and to declare that decree dated 30.04.2023 passed in Spl.C.S. No.10/2023 is illegal and not binding upon him.

7. It is the contention of plaintiff that defendant no. 1 & 2 had filed Spl.C.S. No. 10/2023 regarding with suit property including other properties which is ended in compromise vide decree dated 30.04.2023, the copy of decree is filed alongwith document list Exh. 4(1).

8. It is further case of plaintiff that Sakharam Gaurappa Hirawadekar was the protected tenant of Govind Gorkhi Shinde and his name was mutated vide Mutation Entry No. 3352 dated 06.09.1948. Thereafter mutation was recorded in the name of Ramu Sakharam Hirawadekar, the father of plaintiff. The plaintiff father had obtained “ 32 M Certificate” on 30.12.1982, various cases were filed regarding with tenancy and presently dispute regarding with 32 M Certificate was pending before the Hon’ble High Court.

9. Shri. Upadhey submits that the defendants have well aware about the litigation pending before the Hon’ble High Court

regarding with tenancy of suit property still they had purchased suit property and thereafter filed Spl.C.S. No. 10/2023 without joining their seller and plaintiff herein as party, without joining necessary parties, they resolved their dispute and obtained compromise decree dated 30.04.2023 which is illegal and not binding upon plaintiff.

10. In order to show that the plaintiff has interest in suit property, Shri. Upadhey submits that the plaintiff and his brother had filed R.C.S. No. 36/2000 for perpetual injunction which is decreed vide Judgment and order dated 18.10.2006, the defendants therein are permanently restrained from obstructing the peaceful possession over the suit land without following due process of law. The plaintiff has filed the copy of Judgment alongwith document list Exh.4(4). The Judgment and decree dated 18.10.2006 was challenged by Ramchandra & ors. vide filing R.C.A. No. 94/2006 which is dismissed vide Judgment and order dated 22.01.2014. The copy of Judgment in Appeal is filed alongwith document list Exh. 4(5).

11. It is the submission of Shri. Upadhey that defendants have purchased suit property from Ramchandra Govind Shinde, Shamrao, Bhimrao Govind Shinde and Shakuntala Baburao Patil vide registered sale deed dated 19.09.2000, copy of sale deed filed alongwith document list Exh. 17(4). The mutation No. 10050 based on sale deed dated 19.09.2000 was cancelled on 30.11.2000, the copy of mutation is filed alongwith document list Exh. 17(7). Thereafter defendant filed another application for recording mutation by virtue of Sale deed, the same was rejected by Circle Officer. After rejection of application, the defendants had preferred appeal before the Sub Divisional Officer, the

same is allowed and mutation no. 18015 was recorded by virtue of Order dated 29.08.2022 passed by Sub Divisional Officer in RTS Appeal No.247/2021.The order dated 29.08.2022 in Appeal is challenged by plaintiff by filing Second Appeal No. 148/2024 before the Additional Collector, Sangli which is pending for hearing.

12. The plaintiff came with contention that sale deed in between defendants and erstwhile owner is illegal, the dispute regarding tenancy of plaintiff is pending before the Hon'ble High Court. According to Shri. Upadhey, the compromise decree obtained by defendants is illegal and not binding upon plaintiff. With the aid of illegal mutation, the defendant no.1 may create third party interest over the suit property and argued for allowing application for interim relief.

13. The Ld.Counsel Shri. Patil for defendant no.1 challenged application on the ground of locus standi of plaintiff to file main suit for declaration and perpetual injunction. He submits that the alleged tenancy right of plaintiff is ceased vide Judgment and order dated 13.07.2020 passed by the Maharashtra Land Revenue Tribunal, Kolhapur in Revision Application/S.S./26/B/2002 and another Revision Application/S.S./40/B/2001. According to him, the plaintiff and his predecessors have no any tenancy right in suit property by virtue of order passed by the Maharashtra Land Revenue Tribunal, Kolhapur.

14. I duly considered submission of both parties. The point is not at stake that the Maharashtra Land Revenue Tribunal disposed off

the revision petitions vide order dated 13.07.2020. The defendant no. 1 came with contention that the order dated 13.07.2020 is passed against the plaintiff and in favour of the landlords. The same got support from para no. 3 of plaint.

15. The another objection of defendant that plaintiff has no locus standi to seek any declaration and injunction against her. According to Shri. Patil that the sale deed is executed by Ramchandra Govind Shinde & ors in favour of defendants and it is registered on 19.09.2000. The seller of suit property have right to challenge the sale deed in favour of defendants, however same is not the case of plaintiff. The plaintiff has no right to challenge the sale deed when he was not party to the sale deed.

16. The point of locus standi to file suit is assailed by Shri. Upadhey by submitting that the plaintiff has every right to seek relief regarding with suit property. According to him, the alleged right of tenancy is to be decided by the Hon'ble High Court. Filing of litigation by plaintiff before the Hon'ble High Court is not disputed by defendants. Considering same and record, at this stage, the issue regarding with locus standi does not appear proper to consider. Whether plaintiff has right to seek relief or not is a question of fact and it can be decided by giving an opportunity to the parties for adducing evidence at the prospective stage of suit.

17. The another objection raised by defendant no. 1 that she is sole owner of suit property by virtue of decree dated 30.04.2023 passed in Spl.C.S. No. 10/2023. The decree is not concerned only with suit property but it related with other properties too. The Ld.Counsel

Shri. Patil submits that plaintiff has not clear out his concern with other properties involved in decree in favour of plaintiff still he filed suit and seek cancellation of decree passed in Spl.C.S. No. 10/2023.

18. On perusal of plaint, it reveals that the plaintiff has filed main suit for cancellation of decree dated 30.04.2023 to the extent of suit property involved in suit. Therefore objection of defendant regarding with other properties involved in decree cannot be considered.

19. The next submission of Shri. Patil that the suit is time barred, the disputed sale deed is dated 19.09.2020 vide document no. 920/2000 in favour of defendants. According to him, the document being registered, the aggrieved party has right to challenge sale deed within a three years from the date of its registration but the same is not happened in the case of plaintiff.

20. In order to justify of filing suit after three years, the Ld.Counsel Shri. Upadhey submits that mutation based on sale deed was disputed. According to him, in March 2024 the plaintiff first time acknowledged mutation entry no. 18452 dated 10.02.2024 and immediately filed main suit within a time limit for cancellation and declaration.

21. The objection of defendant regarding with time limit also liable for discarding for the reason that the point of limitation is not pure question of law, it being mixed question of law and fact needs to be decided at the proper stage of suit by allowing parties to lead evidence.

22. The defendant no. 1 has raised defense that she and defendant no. 2 have purchased suit property from Ramchandra Govind Shinde & ors vide Registered Sale deed dated 19.09.2000 vide document No. 920/2000 for consideration amount of Rs. 55,000/-. According to Shri. Patil, defendants are the bonafide purchaser without notice. Sale deed in favour of defendants are not challenged by the predecessors in title and argued for rejection of application.

23. The stand of defendant no.1 regarding with purchase of suit property under sale deed dated 19.09.2000 is not rebutted by plaintiff with any prima facie material document. According to Shri. Patil that alleged right of plaintiff in suit property is to be established by plaintiff by leading evidence during prospective stages of suit i.e. trial of suit. If plaintiff succeeded in establishing his case, right available to him by virtue of Section 52 of the Transfer of Property Act. According to him, the defendant no.1 is the legal owner of disputed property and she has every right to use and enjoy it as per her will. The submission of Shri. Patil does not appear something unreasonable. The available material is sufficient to conclude that plaintiff failed to establish that prima facie case and balance of convenience are in his favour. Hence, I gave my negative finding to point No. 1 & 2.

AS TO POINT No. 3 -

24. Shri. Upadhey for plaintiff submits that defendant no.1 is going to create third party interest over the suit property based on compromise decree dated 30.04.2023 passed in Spl.C.S. No. 10/2023. If she is not restrained from creating third party interest, the plaintiff would sustained irreparable loss. However, same cannot be considered

for the reason that no prima facie case and balance of convenience made out in favour of plaintiff.

25. The defendant no. 1 came with contention that she is the owner of suit property under sale deed dated 19.09.2000 and decree dated 30.04.2023 passed in Spl.C.S. No. 10/2023. The fate of compromise decree is to be decided at the prospective stages of the suit. At present the defendant no.1 is appear owner of the suit property and she cannot be restrained from enjoying the benefits of owner. Besides, the alleged right in suit property is protected by virtue of Section 52 of the Transfer of Property Act. The plaintiff failed to establish that irreparable loss would be caused to him in case application filed for interim relief is rejected. Hence, I gave my negative finding to point no. 3.

AS TO POINT No. 4 -

26. In view of negative finding recorded at point no. 1 to 3, the application filed for interim relief is liable for rejection so by giving such answer to this point I proceed to pass following order :-

=ORDER=

Application is rejected.

Islampur
Date : 21.08.2026.

(G.R.Patil)
Civil Judge Senior Division,
Islampur.