

R.C.S.NO.150/2016

ORDER BELOW EXH. 5
(Passed on 7th January, 2017)

This is an application filed by the plaintiff for temporary injunction under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure.

Facts which gave rise the application are as under :-

(2) Plaintiff has filed the suit for perpetual injunction an area of 60R agricultural land out of Gat No. 740 situated within the jurisdiction of village Hingangaon Tal. Kavathe Mahankal. It is contended that, plaintiff is owner and in possession of the suit agricultural land. He has purchased the suit land from Murlidhar Ramchandra Kulkarni by way of registered sale deed dated 01.12.2004. Mutation entry is also effected in the record of right of the suit agricultural land in the name of plaintiff. Plaintiff is residing in the suit agricultural land by erecting the house and cattle shed. He is suffering from blindness and depend upon his wife.

(3) On the other hand, defendant without having any concern with the suit land has tried to disturb the peaceful possession of the plaintiff without any reason. It is further contended that, defendant has filed a suit bearing R.C.S.No 64/2016 for declaration and perpetual injunction before this Court against the plaintiff. In the said suit the application given by defendant for temporary injunction has been partly allowed by Court and thereby present plaintiff is restrained from alienating the suit land in any manner till the final decision of the said suit. According to

plaintiff, the Court has prima facie held his possession as well as ownership over the suit land. Further, in spite of the said fact defendant has tried to obstruct his peaceful possession over the suit land by himself as well as through his persons appointed for that purpose. Plaintiff is suffering from the act of defendant. Therefore, he constrained to file this suit alongwith the present application to restrain the defendant from causing any obstruction to his peaceful possession over the suit land till the final disposal of the suit.

(4) In support of the application plaintiff has produced on record the document of title of the suit land i.e. 7/12 extract, sale deed, mutation entry etc. He has also produced the certified copies of the pleading and order passed below Eh.5 in R.C.S.No. 64/2016. Plaintiff has also produced the photographs showing the factual position over the suit land.

(5) Defendant was served with the suit summons as well as notice of this application by registered post. However, he did not appear to contest the suit. Record shows that, on 04.01.2017 learned advocate Mrs. S.S. Pawar appeared before this Court and filed undertaking on behalf of defendant seeking time to file written statement/ Say. It is further seen that, on 5.1.2017 an application was moved by learned advocate Mrs. S.S.Pawar on behalf of defendant alongwith Vakalatnama at Exh. 20 for adjournment. By way of order passed on the said application time till today was granted to the defendant. However, today defendant neither appeared nor filed reply to the application for temporary injunction. It is to be noted that learned advocate

appearing on behalf of defendant has also filed on record the copies of an order passed below Exh.5 as well as appeal preferred by defendant against the order passed by this Court before the Hon'ble District Court, Sangli.

(6) Admittedly, no stay has been granted by the Hon'ble District Court to the execution of the order passed below Exh.5 by this Court in R.C.S.No. 64/2016 till the date.

(7) In backdrop of the aforesaid facts and circumstances, I have heard Mr.V.N.Atpadkar appearing on behalf of plaintiff at length. Learned Advocate Ms. S.S. Pawar also remained present during the hearing and submitted arguments on the law point.

(8) It is submitted by learned advocate Mr.V. N.Atpadkar appearing on behalf of plaintiff that, though the order of temporary injunction is passed against the plaintiff in R.C.S.No. 64/20016, he is bound to abide said order. However, as plaintiff is in possession of the suit land which is also prima facie held by the Court while passing order below Exh.5 in R.C.S.No. 64/2016, he is entitled to protect his possession till final disposal of said suit. However, defendant without having any concern with the suit land is now trying to disturb the possession of plaintiff without any just and reasonable cause. Therefore, it is necessary to restrain the defendant temporarily from causing any obstruction to the peaceful possession of plaintiff over the suit land.

(9) On the other hand learned advocate Mrs. S.S.Pawar appearing on behalf of defendant submitted that, the order passed

by this Court in R.C.S.No. 64/2016 below Exh.5 is subjudiced before the Hon'ble Appellate Court. Plaintiff therein i.e. present defendant has challenged the said order by filing the Civil Misc. Appeal No. 179/2016 before the Hon'ble District Court, Sangli. Therefore, according to learned advocate Mrs. Pawar, it would not proper to pass any order in the present suit as there is possibility of the distinguishing orders in respect of the same subject matter.

(10) I have carefully gone through the record of the suit as well as documents on record. It is not in dispute that in R.C.S.No. 64/2016 defendant has sought declaration for setting aside sale deed of the suit land executed by his deceased father in favour of the plaintiff. Present plaintiff appeared in said suit and filed his written statement as well as reply to the application for temporary injunction. Upon hearing both the parties on merits, this Court has allowed the application for temporary injunction whereby present plaintiff is temporarily restrained from alienating the suit land or creating third party interest therein in any manner, till final disposal of the said suit. It is to be noted that, this Court has prima facie observed while dealing with the application for temporary injunction in R.C.S.No. 64/2016 that present plaintiff is owner and in possession of the suit land on the basis of the sale deed executed in his favour long away back in the year 2004. Said observation of this Court based upon the fact that deceased father of defendant had executed a sale deed of the suit land in favour of plaintiff for valuable consideration of Rs. 1,30,000/-. Now, at this stage, plaintiff is apprehending the obstruction at the hands of defendant as well as through his person on the ground that this Court has prima facie denied the claim of the possession of

defendant over the suit land. It is also to be noted that in spite of opportunity given from time to time, defendant has not filed his reply to this application. Therefore, in my considered opinion, considering the facts as discussed above, the apprehension sought by the plaintiff cannot be ruled out. Therefore, it would be proper to protect the possession of the plaintiff over the suit land until further orders. With these observations I pass following order:

O R D E R

1) Defendant is hereby temporarily restrained from obstructing the possession of plaintiff over the suit land as specifically mentioned in paragraph No. 1 of the plaint by himself or through any person on his behalf until further orders.

2) Costs in case.

Date : 07/01/2017.
Place : Kavathe-Mahankal.

Sd/-xxxx
(Pravin R. Navale)
Civil Judge Junior Divison,
Kavathe-Mahankal.