

R.C.S.NO.64/2016**ORDER BELOW EXH. 5**

(Passed on 12th August, 2016)

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 setting aside the sale deed, for perpetual injunction and alternatively for possession of the agricultural and land admeasuring area of an 60R out of Gat No.740(e) situated at village Hingangaon Tal. Kavathe Mahankal Dist. Sangli. *(Hereinafter, referred to as “the suit land” for the sake of brevity.)*

(3) It is contended that, the suit land is ancestral property of plaintiff and defendant nos.2 to 4. Father of plaintiff i.e. Murlidhar was original owner of the suit land. Original Gat No. 740 admeasuring 22 Acre was owned by Ramchanra i.e. grandfather of plaintiff. In the year 1996 said land was divided whereby Gat No. 740(e) was allotted to father of plaintiff. Defendant no. 2 is mother of plaintiff and defendant nos.3 to 4 are his sisters. Plaintiff has not claimed any relief against the defendant nos. 2 to 4 in the present suit.

(4) It is contended that the father of plaintiff retired from his service as teacher in the year 1984. After retirement he was residing at Kavathe Kahankal alongwith defendant no.2 i.e. wife. He was heart patient and he had a heart-attack in the year 2004 and also lost his eye sight. At the age of 90 years, Murlidhar died

in the year 2012. According to plaintiff, defendant no.1 and his father were serving with his family. His family was having faith on defendant no.1. The suit land was/is an irrigated land and was having market price near about 5 to 10 lacs per acre in the year 2004. However, by taking undue advantage of the fact that plaintiff and other children of Murlidhar were out of station, defendant no.1 get executed a false sale deed in his name in respect of the suit land from Murlidhar Kulkarni on 01.12.2004. Plaintiff came to know about the said fact when he obtained the record for entering the names of legal representatives of deceased Murlidhar after his death. According to plaintiff the defendant no.1 was never in possession of the suit land nor he has any concern there with.

(5) Gat No. 940/e was never partitioned between plaintiff, his father and other family members. Further, his father never received amount of Rs 1,20,000/- as mentioned in so called sale deed. Deceased Murlidhar was not entitled for 0.60R land as his share in Gat No.740/e. Therefore, the sale deed executed in favour of the defendant no.1 is false and bogus. On these grounds, plaintiff has filed the suit for setting aside the said sale deed. It is further contended that plaintiff and his family members are in cultivating possession of entire Gat No.740/e and defendant no.1 is causing obstruction to their possession. Therefore, he has also prayed perpetual injunction against the defendant no.1. In respect of the said prayer plaintiff has moved this present application to restrain the defendant no.1 temporarily from creating third party interest or alienating the suit land in any manner till final disposal of the suit and also restraining him from

obstructing the peaceful possession of plaintiff and his family members over the suit land till final disposal of the suit.

(6) Defendant no.1 appeared upon service of suit summons/notice and filed his written statement/reply vide Exh.14. He has denied entire claim of the plaintiff. HE has put forth the specific case that he has purchased the suit land from Murlidhar Kulkarni i.e. the father of plaintiff for the valuable consideration of Rs 1,20,000/- on 01.12.2004. The sale deed was duly executed before the Joint Sub-Registrar at Kavathe Mahankal. Since the date of sale deed, he is in possession of the suit land and has grown crop of grapes therein. He has also constructed a house and cattle-shed in the suit property. According to the defendant no.1, deceased Murlidhar had got 1/4th share in ancestral property by way of partition between him and his brothers held on 17.07.1995. Since then he was in absolute ownership and in possession of Gat No.740/e. He has further contended that out of the total area, Murlidhar sold 60R land i.e. the suit land to him for his own necessity. Thus, defendant is in possession of the suit land since year 2004. and plaintiff has no right to obstruct his possession by filing this suit. Therefore, he has prayed for rejection of present application as well as of the suit alongwith costs.

(7) I have heard learned advocate Smt. R.B.Apate for the plaintiff and learned advocate Mr.V. N.Atpadkar for the defendant no.1 at length.

(8) Following points arise for determination to which I have given my findings along with reasons thereon are as follows :

<u>S.N.</u>	<u>POINTS</u>	<u>FINDINGS.</u>
1.	Whether plaintiff has prima facie case?	Partly in the affirmative.
2.	Whether balance of convenience lies if favour of plaintiff ?	Partly in the affirmative.
3.	Whether plaintiff would suffer irreparable loss?	Partly in the affirmative.
4.	What order?	As per final order

REASONS.

(9) Prima-facie case, balance of convenience and irreparable injury are the three requirements for obtaining injunction. One of the three requirements, as stated above, for obtaining injunction is that the plaintiffs must establish a prima-facie case in their favour. The Court must not only be satisfied that the claim is not frivolous or vexatious but there is a serious question to try. The requirement of prima-facie case need the plaintiff to establish from the findings that he has a debatable case in his favour and without the same no injunction can be granted

AS TO POINT NO. 1 to 3 :-

(10) All points are interlinked and interconnected with each other, therefore taken for consideration together for their convenient discussion.

(11) Plaintiff has brought on record the 7/12 extract of the suit land alongwith certified copy of sale deed dated 01.12.2004. Plaintiff has also produced the copy of judgment in R.C.S.No.

80/2005 passed by the Civil Judge, Jr.Dn., Kavathe Mahankal dated 19.07.2013. On the other hand defendant no.1 has also produced on record the 7/12 extract of the suit land, mutation entry no. 4420,1762 and the copy of evidence of Murlidhar Ramchandra Kulkarni recorded in R.C.S.No 80/2005 before the Court.

(12) It is admitted position that original Gat No.740 was belonging to Ramchandra Kulkarni. It is also be noted that, Murlidhar i.e. father of plaintiff got an area as mentioned in Gat No.740/e by way of partition with his brothers. It is also not much disputed by the defendant no.1 that Murlidhar Kulkarni was residing at Kavathe Mahankal. In this context, plaintiff has put forth the specific case that defendant no.1. was serving in his family. By taking disadvantage of said fact and also by taking disadvantage of the fact that plaintiff and all family members are residing out of station, he fraudulently get executed the sale deed of suit land from his old aged father in the year 2004. According to plaintiff no such sale deed was executed by deceased Murlidhar in favour of defendant no.1 and the so called sale deed is false and bogus. Therefore, he has filed the suit for setting aside the sale deed. At the same time plaintiff has also claimed to be in possession of the suit land. Therefore, he has prayed by way of present application to restrain the defendant no.1 from creating third party interest in the suit land and also from obstructing his possession over the suit land.

(13) On the other hand, the defendant has put forth the specific defence that he has become absolute owner of the suit land since the date of sale deed i.e. from 01.12.2004. He has paid valuable

consideration to the original owner Mulidhar Kulkarni. Now he is in cultivating possession of the suit land for more than 10 years and has grown crops therein.

(14) It is seen from the rival pleadings of the parties that, both of them claiming to be in possession of the suit land on the date of filing of the suit. For the purpose of deciding application for temporary injunction in such a case, it is necessary to determine prima facie as to who is in possession of the suit land on the date of filing of the suit. In this context, on careful scrutiny of pleadings of both the parties and the documents on record it is revealed that, plaintiff and defendant no.2 to 4 are residing out of station at Mumbai. Plaintiff himself has contended that he was not present at Kavathe Mahankal and in his absence said sale deed was executed. It is the case of plaintiff that he got knowledge about the sale deed when he obtained the necessary record for the purpose of entering the names of legal heirs of deceased Murlikhar in the year 2012. This suit is brought before the Court in the year 2016 i.e. after 4 years of death of Murlidhar. Though, assuming for a while that plaintiff came to know about the alleged sale deed after the death of his father, it was possible for the plaintiff to bring this suit immediately before entering the names of legal representatives of deceased Murlidhar in the record of rights of Gat No. 740(e) . However, it is seen from the record that, names of plaintiff and defendant nos. 2 to 4 are already recorded in the record of rights of Gat No.740/e. Even 7/12 extract filed alongwith the suit also reflects the names of plaintiff and defendant nos. 2 to 4 being holders of Gat No. 740/e along with defendant No. 1. The said 7/12 extract also shows that

Bapu Balu Shejal i.e. defendant no. 1 is holder of 0.60R land out of total area of 1 H. 99R in the said gat number.

(15) In this regard, it is evident to note that the sale deed was executed on 01.12.2004. The crop statement appearing on 7/12 extract shows that the entire Gat No.7/12, is in common possession of its holders. No specific entry as to cultivating possession of plaintiff appears to have been shown in the 7 /12 extract since year 2006 till the date. In this scenario, the contention of the plaintiff that he is in possession of the suit land does not seem to be probable.

(16) On the other hand, defendant no.1 prima facie appears to be the owner and in possession of the suit land on the basis of the sale deed in his favour which was executed long away back in the year 2004. It is settled position of law that the injunction generally should not be granted against the true owner of the immovable property. No doubt, a trespasser can claim injunction against the true owner also, but for that purpose he is required to establish his long standing possession with the said immovable property. In the instance case, defendant no.1 appears to be holder of 60R land in the 7/12 extract which appears to have been purchased by him by way of registered sale deed dated 01.12.2004. On the other hand, no evidence either prima facie or otherwise has been brought on record by plaintiff to show that he is in possession of the entire Gat No. 740/e including the suit land. Therefore, in my considered opinion that, it would not be

proper to grant relief of injunction in favour of plaintiff as to the obstruction to his possession as claimed by him.

(17) However, it is to be noted that, the suit is brought by the plaintiff for setting aside the sale deed executed by his father in favour of defendant no.1. The substantial claim of plaintiff would be decided on merits after the trial. However, at this stage, the apprehension of plaintiff that the defendant no.1 would alienate the suit land or will create third party interest therein by taking disadvantage of his name entering in the record of rights cannot be ruled out. It is admitted position that the suit land is part and parcel of Gat No 740/e which is ancestral property of plaintiff and defendant nos. 2 to 4. Therefore, in my considered opinion, it would be proper to restrain the defendant no.1 from alienating the suit land or creating third party interest therein in any manner till final decision of the suit.

(18) Thus, the prima facie case appears to be in favour of plaintiff to the extent of alienation of the suit property by defendant no.1. The balance of convenience as regard to such alienation tilts in favour of plaintiff and he would suffer irreparable loss if the injunction is not granted in that regard. However, as far as the temporary injunction in respect of disturbing the possession as claimed by the plaintiff is concerned, plaintiff has failed to establish prima facie that he is in possession of the suit land on the date of filing of the suit. On the other hand, the defendant no.1 appears to be in possession thereof at the relevant date. Therefore, it would not be proper to grant temporary injunction as to the possession as claimed by the

plaintiff. In the result, I answer point nos. 1 to 3 partly in the affirmative and pass the following order to answer point no.4

ORDER

- 1) Application below Exh. 5 is partly allowed.
- 2) Defendant no.1 is hereby temporarily restrained from alienating the suit land or creating third party interest therein in any manner, till final disposal of the suit.
- 3) Costs in case.

Date : 12/08/2016.
Place : Kavathe-Mahankal.

Sd/-xxx
(Pravin R. Navale)
Civil Judge Junior Division,
Kavathe-Mahankal.