

Order below Exh. 13 in Reg. Civil Appeal
No.41/2017
[Swapnil Vs. Appaso Sutar]

[1] This application filed by appellant under Order 39 Rules 1 and 2 of CPC.

[2] In short facts of the case are that appellant filed suit bearing No.236/2010 for injunction and right of pre-emption. Respondent also filed RCS no.333/2012 for redemption of mortgage. Both suits are tried together. Appellants RCS no.236/2010 was dismissed. Respondent's RCS no.333/12 was decreed by asking the appellants to re-execute sale deed by way of redemption of mortgage and accept the amount of Rs.1,60,000/- deposited in the Court. It also directed that after executing document respondent is entitled to get possession.

[3] Appellant's contention is that the respondent by taking disadvantage of decreeing his suit, he is obstructing appellant's possession. So he be restrained from obstructing appellant's possession till disposal of appeal.

[4] The respondent filed say vide Exh.14. His contention is that appellant's suit for injunction was dismissed. The appellant nowhere contended that he is in possession of the suit property and respondent will not obstruct his possession. His contention is that in his redemption suit he claimed his possession and so he not claimed relief of possession. It is further contended that

it nowhere proved in lower Court that the appellant is in possession. So interim injunction cannot be granted.

[5] Heard advocates for both the parties.

[6] Following points arise my determination. My findings and reasons for the same are as follows.

Sr.No	Points	Findings
1.	Whether appellant prima facie proves his possession ?	In affirmative
2	Whether appellant proves balance of convenience and irreparable loss would be caused to him. ?	In affirmative
3	What relief ?	As per final order

Reasons

Points no.1 to 3 :

[7] Appellant's advocate submitted that the respondent executed mortgage by conditional sale deed for Rs.1,60,000/- on 10.05.2000 and since then he is in possession. He also contended that it is agreed that sale deed is to be executed within 5 years, however the respondent did not pay the amount and got re-execute the document. On the contrary, it shows the respondent by taking disadvantage of his name in 7x12 extract obstructing his possession and selling property. So he has right of pre-emption. He further submitted that the lower Court after recording evidence on record held that appellant is

in possession on the basis of mortgage by conditional sale deed dt. 10.05.2000 and asked the appellant to hand over the possession after re-executing sale deed. So it clearly shows the appellant is in possession of suit land. The respondent by taking dismissal of the injunction suit obstructing his possession. So respondent be restrained from disturbing appellant's possession. He further submitted that appellant challenged the decree in redemption suit. So unless appeal is decided the respondent cannot obstruct possession and he has right to occupy the property and so if respondent obstructed his possession it will cause irreparable loss and balance of convenience lies in his favour.

[8] Respondent's advocate submitted that respondent is in possession of the suit land. He cultivated the sugarcane and supplied it to Hutatma Sugar Factory. His name is in cultivation column. So it shows respondent is in possession.

[9] I have gone through the record and proceeding. In mortgage by conditional sale deed the property which is mortgaged is described within boundaries and it also mentioned possession was handed over to the appellant. The lower Court also recorded finding that the respondent executed mortgage by conditional sale deed on 10.05.2000 in favour of appellant and appellant is in possession of the suit land on the basis of mortgage by conditional sale deed. This observation along with mortgage by conditional sale deed prima facie shows that the appellant is in possession of the suit land and

lower Court also directed to hand over possession to respondent after re-execution of sale deed. Once it is prima facie proved appellant is in possession of the suit land on the basis of mortgage by conditional sale deed, then the respondent cannot obstruct appellant's possession and if obstruct it will certainly cause irreparable loss to the appellant and balance of convenience lies in his favour. With this I find appellant proved prima facie case in his favour. Appellant also proved balance of convenience and irreparable loss in his favour. Therefore, application is to be allowed. With this, I proceed to pass the following order.

Order

1. Application is allowed.
2. Respondent is temporarily restrained from obstructing appellant's possession till disposal of the appeal.

ISLAMPUR.
Date: 06/11/2017

Sd/-xxx
[K.S. Hore]
DISTRICT JUDGE-II & ASJ,
ISLAMPUR.

**Order below Exh. 15 and 19 in Reg. Civil Appeal
No.41/2017**

[1] These applications are filed by respondent for allowing to produce documents under Order 41 Rule 27 of CPC.

[2] Respondent's contention is that he is in possession of the suit property. He has cultivated sugarcane and registered with Hutatma Sugar Factory and sugarcane was sent in his name.

[3] By way of Exh.19 he intends to produce 7x12 extract of land Gat no.1739 to show he is in possession from 1994 till 2017 and his name is recorded in cultivation column.

[4] The appellant by filing say objected these applications contending that the respondent cannot produce new documents.

[5] Heard advocates of both the parties.

[6] One suit was filed by present appellant bearing No.236/2010 for injunction and right of pre-emption. Respondent also filed RCS no.333/2012 for redemption of mortgage. Both suits are tried together. Appellant's RCS no.236/2010 was dismissed. Respondent's RCS no.333/12 was decreed by asking the appellant to re-execute sale deed by way of redemption of mortgage and accept the amount of

Rs.1,60,000/- deposited in the Court. It also directed that after executing document respondent is entitled to get possession.

[7] Appellant in RCS No.236/2010 filed present appeal challenging the decree in both the suits.

[8] I find suit is of immovable property and both parties are claiming right so to decide the appeal documents will help. So production is allowed.

ISLAMPUR.
Date: 06/11/2017

Sd/-xxx
[K.S. Hore]
DISTRICT JUDGE-II & ASJ,
ISLAMPUR.