

ORDER BELOW EXH. 05 IN RCS NO. 119/2015.

The suit is for perpetual injunction regarding property bearing Gat No. 1037/A admeasuring 0 H 59 R situated at village Kavathe-Mahankal, Tq. Kavthemahankal, Dist. Sangli. [Hereinafter 'the suit property']. The plaintiff has preferred an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 for temporary injunction regarding the suit property against the defendants as prayed in application.

02] It is the contention of plaintiff that, he has purchased the suit property from defendant no. 1 and Shakuntala Dada Patil for consideration of Rs.50,000/- vide sale deed no. 141/2001. Accordingly, the name of plaintiff has been mutated on 7x12 extract of the suit property. The plaintiff has received possession of the suit property on the basis of the said sale deed. Thereafter, the plaintiff has mortgaged the suit property to Nivrutti Dnyanu Patil and also executed conditional sale deed in his favour the year 2005. Thereafter, plaintiff has repaid the amount to Nivrutti Dnyanu Patil and he has delivered possession of the suit property to plaintiff in the year 2012. Since then, the plaintiff is in possession and cultivating the suit property. But, the plaintiff has got executed re-conveyance deed in the form of sale deed of suit property in his favour in the year 2015. It is the contention of the plaintiff that on 05/11/2013, the defendants have firstly caused obstruction to his possession over the suit property. Thereafter, the defendants have again caused obstruction to his possession on 03-01-2014, 15/09/2014, 10/12/2014 and lastly on 30/07/2015. The plaintiff has filed written complaint before police station, Kavathe-Mahankal, but the police have not taken any action. Therefore, the cause of action arise for filing present suit on 30/07/2015. Lastly, prayed that application be allowed

and defendants are restrained from causing obstruction to the peaceful possession of the plaintiff over the suit property till decision of the suit.

03] The defendants have appeared and filed their written statement Exh. 31. It is the contention of the defendants that the plaintiff has fraudulently got executed sale deed from defendant no. 1 without consideration, by taking undue-advantage of defendant no. 1. The said sale deed is false, bogus and not binding upon present defendants. The defendant no. 2 was minor at the time of alleged sale deed. The defendant No. 2 has filed R.C.S.No. 107/2008 for partition and separate possession against present plaintiff and other defendants. Unfortunately, the said suit was dismissed on 06-01-2014. The defendant No. 2 has filed Civil M.A. 13/2016 for restoration of said suit. The defendants are in possession of the suit property. The defendant No. 1 has not delivered the possession of suit property to the plaintiff. The plaintiff has filed false suit in order to dispossess these defendants. There is no cause of action arise to file the present suit. Lastly, prayed that application may be rejected with costs.

04] From the rival contentions of both the parties, following points arise for my determination along with my findings thereon for the reasons stated herein below :

Sr.	P O I N T S	F I N D I N G S
1	Whether the plaintiff has prima-facie case ?	In the affirmative.
2	Whether balance of convenience lies in favour of the plaintiff ?	In the affirmative.
3	Whether the plaintiff will suffer irreparable loss, if the injunction is refused ?	In the affirmative.
4	What order ?	...As per final order.

REASONS

AS TO POINT NOS. 1 TO 3 :-

05] The learned advocate for the plaintiff, has submitted that, the plaintiff has strong prima-facie case. The plaintiff is owner and possessor of the suit property vide sale deed No.141/2001. The name of plaintiff is mutated on 7x12 extract of the suit property. The defendants have not challenged the said sale deed and mutation entry till today. The defendants have caused obstruction to the possession of the plaintiff over the suit property by denying his title. In support of his case, the plaintiff has produced 7/12 extract of the suit property (Exh.08 and Exh.24), mutation entry no. 11366 (Exh. 10), mutation entry no. 19232 (Exh.25), xerox copy of sale deed No.141/2001, applications filed before Kavathe-Mahankal police station on 05-11-2013, 03-01-2014, 15-09-2014 and 11-12-2014, certified copy of R.C.S.No.77/2008.

06] On the contrary, the learned Advocate for the defendants has submitted that, the father of plaintiff has got executed false, bogus sale deed without consideration. The defendants have never given possession of the suit property to the plaintiff. The defendant No. 2 has challenged said sale deed in R.C.S.No. 77/2008. He has further stated that RCS No.77/2008 is wrongly mentioned in written statement Exh. 31 as R.C.S.No.107/2008. He has further submitted that the plaintiff has failed to prove prima-facie case in his favour. Therefore, the question of balance of convenience and irreparable loss does not arise. He further submitted that, the plaintiff has filed present suit in order to harass these defendants and lastly, prayed for rejection of application. In support of their case defendants have filed affidavit of Nilesh Sambhaji Mali and Nilesh Deelip Salunkhe.

07] Thus, having consideration of the above submission, I hold that, in order to decide the present application, it is required to be seen

whether plaintiff has made out prima-facie case or not ? To ascertain this fact, plaintiff has relied upon documents placed on record. According to the plaintiff, he is owner and possessor of the suit property in view of sale deed No. 141/2001. On perusal of 7x12 extract (Exh.8), it shows the name of Nivrutti Dnyanu Patil in ownership as well as possession column. Mutation entry no. 11366 shows that the name of plaintiff was entered in ownership column on the basis of sale deed No. 141/2001. Contents of sale deed No. 141/2001 prima-facie shows that the defendant no. 1 and Shakuntala Dada Patil have delivered possession of the suit property to the plaintiff on the date of execution of sale deed itself. Neither, the defendant No. 1 nor Shakuntala Patil have challenged the said sale deed till today. The defendant No. 2 has stated that he has filed suit for partition. On perusal of certified copy of R.C.S.No. 77/2008 shows that suit was for partition and possession against present plaintiff and other defendants. The same was dismissed for default on 06-01-2016. There is nothing on record to show that the restoration application is pending. In such situation, I do not find any force in the submission of the advocate for the defendants that the defendant No. 2 has challenged the said sale deed. In such situation, the contents of the said sale deed is prima-facie binding upon the defendants unless and until contrary is not proved by the defendants. For the deciding this issue detail trail is necessary.

08] On contrary, the advocate for the defendants has submitted that the plaintiff himself admitted in application dated 11-12-2014 that the defendants were forcefully cultivating suit property from 05-11-2013. Nilesh Mali and Nilesh Salunkhe have stated on affidavit that the defendants are in possession of the suit property. But, on perusal of 7x12 extract (Exh.24) shows the name of plaintiff in ownership column, but the name of Nivrutti Dnyanu Patil appeared in cultivation column from

2012 to 2015. Mutation entry No. 19232 shows that plaintiff has got re-conveyed suit property vide deed no. 1246/2015. It shows that the contention of the defendants that they have not delivered the possession of the suit property to the plaintiff is against the documentary evidence like sale deed No. 141/2001, 7x12 extract Exh. 08 and 24. Affidavit of Nilesh Mali and Nilesh Salunkhe are not reliable in absence of test of cross-examination at this stage. Therefore, at this stage I do not find any merit in the submission of the learned advocate for the defendants that they have not delivered possession of the suit property to the plaintiff. In other words, the plaintiff prima-facie appears to be in possession of the suit property vide contents of sale deed No. 141/2001. This fact supports the case of the plaintiff. This fact shows that, the plaintiff is having prima-facie case in his favour. Therefore, I hold that, plaintiff has succeeded to establish prima-facie case in his favour. Considering the facts and circumstance of the case and applications filed by the plaintiff before the police authority, I am of the view that the balance of convenience and irreparable loss lies in favour of the plaintiff. Hence, I answer point Nos.1 to 3 in the affirmative. I pass the following order in the answer to point No. 4 :

ORDER

1. The application is allowed.
2. The defendants are hereby temporarily restrained from causing any sort of obstruction to the possession of the plaintiff over the suit property till decision of the suit.
3. Costs in the main cause.

sd/...

Place : Kavthemahankal
Date : 21.09.2016

[Manoj C. Nepte]
Jt. Civil Judge, J.D., Kavthemahankal.

C E R T I F I C A T E

I affirm that the contents of this P.D.F. File Order are same, word to word, as per the original Order.

Name of the Stenographer :-

Name of the Court :- Jt. Civil Judge, J.D., Chakur.

Date of Order :- 14/06/2014

Order signed by the
Presiding Officer on :- 14/06/2014

Order uploaded on :- 24/06/2014