

Mandodari V/s. Sagar.

ORDER BELOW EXH. NO. 5.
(Dated 07.08.2018)

01 Present application filed by plaintiff under Order 39 Rule 1 and 2 of the Code of Civil Procedure for restraining defendant. According to plaintiff, the land in Gat No. 333/1/A, admeasuring 90R has been received by her during partition of the family. According to her, the said land Gat No. 333/1/A, admeasuring 90R was allotted to her share, her sister Vandana Gidde and mother Mandodari Dongare. Accordingly, they were allotted the share of 30R land each in the said gat number. (Henceforth, the southern most part in the said property would be referred as suit property for the purpose of convenience.) According to plaintiff, the southern most part admeasuring 30R was allotted to her share, whereas on the northern side of plaintiff was allotted to their mother Bhamabai, whereas, on the northern side of Bhamabai was allotted to plaintiff's sister Vandana Gidde. According to plaintiff, her sister Vandana has sold out her share to one Pradip Andh long back. According to plaintiff, the remaining 60R land of plaintiff and her mother was being cultivated jointly by them. According to plaintiff, she has levelled her land and made irrigation facility, also one tin shade has been installed on the southern part. Presently, she is taking cash crops like sugarcane in his southern part. According to plaintiff, the defendant on

28.10.2015, taken her mother Bhamabai and prepared one bogus sale deed. According to plaintiff, the defendant has taken her mother Bhamabai under the pretext of preparing the document for obtaining loan and has got executed sale deed of her share. According to plaintiff, the alleged sale deed is false, bogus and fabricated one and not binding of plaintiff. According to plaintiff, there are no any four boundaries mentioned in the said sale deed. According to plaintiff, based upon the said sale deed, he has got sanctioned the mutation entry No. 5177, dated 18.07.2017 and now based upon this, he is threatening plaintiff of dispossessing her of the suit property. According to plaintiff, the defendant is contending that, he has purchased the southern most 30R land from Bhamabai and since then, he is owner of the same. Now, defendant is threatening the plaintiff of removal of the said tin shade. According to plaintiff, in fact, southern most portion is belonging to her, in spite of that, defendant is trying to take forcible possession of the same. Therefore, plaintiff prayed for allowing the application and defendant may kindly be restrained from threatening her or taking forcible possession of the southern most portion of the suit property.

02 Say of defendants was called for. Defendant has filed his say cum written statement vide Exh. No. 15 and strongly opposed the application. Defendant submitted that, application under reply without any substance and prayed for rejection of it.

Defendant submitted that, the applicant is suppressed material facts from the Court and therefore, prayed for rejection of the application. According to defendant, towards the eastern side of the suit property touching to the suit property, there is land of defendant and therefore, he has purchased the same, as it was convenient to him. According to defendants, being dissatisfied with the alleged sale deed executed by Bhamabai, plaintiff has not filed any application to the competent authority. Further, based upon the said sale deed the competent officer has sanctioned the mutation entry in favour of the defendant. Against the sanction of said entry, the plaintiff has not filed any application to the appropriate forum. Therefore, the defendant submitted that, present application is without any substance and prayed for rejection of it.

03 Heard learned advocate for both sides.

04 Perused the record and documents filed on record. After considering the material placed on record, following points arise for my determination against which I have recorded my findings thereon for the reasons stated thereon:-

Sr. No.	P O I N T S	F I N D I N G S
1	Does plaintiff show prima facie case in his favour ?	In the Affirmative

2	Whether balance of convenience lies in favour of plaintiff ?	In the Affirmative.
3	Whether plaintiff will suffer irreparable loss, if temporary injunction application is refused ?	In the Affirmative.
4	What order ?	Application is allowed.

:: REASONS ::

As to point Nos. 1 to 4 :

05 The point No.1 to 3 are interlinked and inter connected with each other, therefore, to avoid the repetition and for the sake of convenience, I am discussing these points together. In order to obtain the relief of temporary injunction under Order XXXIX Rule 1 of the Civil Procedure Code, it is for the plaintiff to establish that, he has “prima facie” case for grant of temporary injunction, meaning thereby, he has been in actual possession of the suit property. Secondly that, the balance of convenience lies in his favour and lastly that, he would suffer irreparable loss, if temporary injunction is refused.

06 The first rule is that, the applicants/plaintiffs must make out a “prima facie” case in support of the right claimed by

him. For the decision of the application, it is necessary to know whether the plaintiff is in possession of suit property? From Order XXXIX Rule 1(c) of the Civil Procedure Code, it is seen that, the Court may by an order grant temporary injunction restraining the defendant threatening to dispossess the plaintiff or otherwise causing any injury to him in respect of any property in dispute to suit if, the act of the defendant is proved by affidavit or otherwise.

07 Perused the record and documents filed on record in the light of argument advanced. On the perusal of the record, it is noticed that, applicant / plaintiff has filed certified copy of 7/12 extract of the Gat No. 333/1/A, dated 24.08.2017, which shows that, name of plaintiff and defendant have been recorded to the extent of 30R each. On perusal of the record, it is also noticed that, the plaintiff has also filed certified copy of the alleged sale deed bearing No. 2901/2015, dated 28.10.2015. On going through the said sale deed, it is noticed that, Bhamabai Machindra Gavhane has executed the registered sale deed of his 30R in the said Gat number in favour of defendant. On going through the contents of the sale deed, it is noticed that, the said Bhamabai has sold out her undivided share / interest of 30R in the said property in favour of defendant. On going through the entire contents of the said sale deed, it is noticed that, the said Bhamabai has not mentioned four boundaries of her 30R land in the said gat number.

08 On the other hand, it has been contended that, plaintiff was cultivating her southern most 30R land and towards the northern side of her share, there was land of said Bhamabai admeasuring 30R. On going through the record, it is noticed that, the defendant contended that, his land is adjacent to the southern side portion of the suit property and it is convenient for him for cultivation of the same. On the perusal of the record, it is noticed that, the applicant has not filed any complaint given to the police station regarding obstruction to his possession over the suit property. However, there appears substance in the contention of the plaintiff and plaintiff contended that, his tin shade as well as sugarcane crop has been there in his field i.e. at suit property. In such circumstances, it appears that, prima facie case is in favour of plaintiff. Plaintiff contended that, his tin shade as well as sugarcane crop is located there in the suit property. In such circumstances, if plaintiff has been dispossessed forcibly by defendant then more inconvenience would be caused to plaintiff. Also huge monetary loss caused to the plaintiff. In such circumstances, balance of convenience is in favour of plaintiff. If application is refused then, in my opinion, irreparable loss would be certainly caused to the plaintiff. Accordingly, all three necessary ingredients of temporary injunction application are in favour of plaintiff. Accordingly, I have answered all the three points in the affirmative. In view of finding to the point No. 1 to 3 in the affirmative, application is liable to be allowed. Hence, in answer point No. 4, I proceed to pass the

following order :-

:: ORDER ::

- 01** Application vide Exh. No. 5 is allowed.
- 02** Defendant, his agent, servant or anybody claiming through him are hereby temporarily restrained from causing any obstruction to the possession of plaintiff over the suit property, during the pendency of this suit.
- 03** Cost in cause.

Date :07-08-2018.

(S.S. Aradwad)
Jt. Civil Judge Junior Division,
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/
Order is same word to word as per the original Judgment.

- a Name of the Stenographer : Shri. P.T. Jadhav
- b **Court** : **Jt. C.J.J.D.& J.M.F.C.,
Pandharpur.**
- c Date of Order : 07-08-2018.
- d **Order** signed by P.O. on : 21-08-2018.
- e Order uploaded on : 21-08-2018.