

ORDER BELOW EXH. 5

The plaintiffs have instituted suit for perpetual injunction and thereby moved an application under Order XXXIX Rule 1(a) of the Code of Civil Procedure Code, 1908 (C.P.C. for brevity) for grant of temporary injunction restraining defendant No. 1 to 3 from interfering their possession over the suit property.

2] Few facts of the case are as under:-

The suit property, the description of which given in plaint para No. 1 is in possession of the plaintiffs being title holder of the same. The suit property was originally belonged to Raghunath Vitthal Kulkarni and after his death the suit property succeeded by his sons namely Kisan, Bhaskar, Subrav & Godabai. The plaintiffs are the owner of suit property by way of survivorship and they are in possession of the same.

3] Defendant No. 1 to 3 have no right over the suit property. They are not in possession of the same. The plaintiffs are cultivating the suit property through their labourers. Defendant No. 1 to 3 have not objected for the same though the names of defendant No. 1 and 2 recorded as tenant in the record of rights of the suit property.

4] Recently the rates of agricultural lands are increased. So,

defendant No. 1 to 3 have developed their interest in the suit property and by using the pressure tactics they are intending to take possession of the suit property from the plaintiffs. They did such activity on 28/03/2020. The plaintiffs have reported the matter to concerned police station, there defendant No. 1 to 3 made the written statement that they will not obstruct the possession of the plaintiffs over the suit property.

5] Again after defendant No. 1 becoming the head punch of village, he tried to obstruct the possession of the plaintiffs in the month of July 2020. The plaintiffs on 30/06/2022 reported the matter to police station Vairag to which, again defendant Nos. 1 to 3 gave the written acknowledgment that, they will not enter in the suit property. In spite of this, defendant No. 1 to 3 are obstructing the possession of the plaintiffs over the suit property. Hence, the plaintiffs prayed for grant of temporary injunction against defendant Nos. 1 to 3.

6] Defendant No. 1 to 3 appeared. They filed the written statement as well as reply to Exh. 5 at Exh. 17. They denied all the adverse allegation leveled against them. They submitted that, the plaintiffs and defendant No. 4 to 6 are not in possession of suit property. They further denied that, they have obstructed the possession of plaintiffs over the suit property. In their specific reply, they submitted that, the father of defendant No. 1 and the grand father of

defendant No. 2 namely deceased Gaibi Nagnath Mate was the protected tenant of suit property as well as block N. 166 of Mouje, Zadi, Tal- Barshi, Dist- Solapur since 10/04/1949. Such entry is recorded in the other column of suit property. Deceased Gaibi Nagnath Mate had filed an application before Tahasildar, Barshi for getting the sale certificate of suit property. On 04/04/1982, he deposited the amount of sale Rs. 464.62, however that time he could not get sale certificate from learned Tahasildar Barshi. Defendant No. 1 to 3 made an application to learned Tahasildar Barshi in the year 2019 and on 05/10/2021 learned Tahasildar passed the order and thereby observed that, there is no need to again deposit sale amount of suit property, so the sale certificate is issued in favour of defendant No. 1 to 3 of suit property. In such situation, the plaintiffs have no voice to say that, they are in possession of suit property and they are owner of the same. So the *prima facie* case as well as balance of convenience is not lies in favour of the plaintiffs. If temporary injunction application rejected then no prejudice will cause to the plaintiffs so prayed for rejection of the application.

7] Following points are arisen for my consideration and I have recorded my findings with reasons thereon :

Sr. No.	Points	Findings
1	Whether the plaintiffs proves that, they have <i>prima facie</i> case in their favour?	In the negative.
2	Whether they further prove that, the	In the negative.

	balance of convenience tilt in their favour ?	
3	Whether the plaintiffs proves that, if temporary injunction application is rejected then irreparable loss will cause to them which cannot be compensated in terms of money?	In the negative.
4	What order and relief ?	As per final order.

REASONS

As to point no. 1 to 4 :

8] All this points are inter connected to each other. Hence, I have taken it together for my discussion. Heard to the learned counsel for both parties. The learned counsel for the plaintiffs have filed the synopsis to Exh. 5 at Exh. 29. On the other hand, the learned counsel for defendant No. 1 to 3 filed written notes of argument at Exh. 26. Even I have personally heard to the learned counsel for both parties in the open court. The plaintiffs have relied upon the documents annexed with list Exh. 4 & Exh. 23. On the other hand, defendant No. 1 to 3 relied upon documents annexed with list Exh. 21, Exh. 25 & Exh. 32.

9] It is admitted fact that, the suit property was belonging to Raghunath Vitthal Kulkarni. It is admitted fact that, there was tenancy on the suit property. The learned counsel for the plaintiffs argued that, the order which passed on tenancy by Tahasildar, same is stayed by

learned S.D.O. Barshi, by passing order on 30/03/2022. So in such situation though sale certificate of suit property is issued in favour of defendant No. 1 to 3 but same is not binding and enforceable against the plaintiffs.

10] In this case it is not material that who is the owner of suit property but the material is that, who is in possession of suit property. The plaintiffs have given much emphasis on the documents annexed with list Exh.4. Same kinds of documents are filed by the plaintiffs with list Exh. 23. The plaintiffs have invited my attention to document No. 5 annexed with list Exh. 23. In this document it is mentioned that, the Khatedar of block No. 167 have obstructed the right of way of Tanaji Mohite. This application is mere application given by Tanaji Mohite to Tahasildar Barshi. If the plaintiffs saying that, they are in possession of suit property then, they would have to furnish the affidavit of this Tanaji for saying that, this plaintiff have obstructed his right of way of his agricultural land and he had seen to the plaintiffs while cultivating the suit property. But the plaintiffs have not furnished his affidavit on record as well as mere application is not trustworthy and reliable which favour with the plaintiffs. Moreover, the plaintiffs have also relied upon the statement recorded by concerned Patwari. But in the statement of Tanaji it is not specifically mentioned that, the plaintiffs are in possession of suit property. Hence, the documents more particularly document No. 5 which included the application as well as statement of witnesses recorded by Revenue

Officer are not helpful to the plaintiff to show their possession over the suit property.

11] The plaintiffs also relied upon the copy of crop insurance application. No doubt the insurance is taken by Rameshwar but the insurance company used to insured the crop on the basis of the entry in the 7th column of 7/12 extract of agricultural property. It is not the practice of insurance company that, before insuring the crops it used to inspect the agricultural land. Hence, this document also not helpful to the plaintiffs to show their possession over the suit property.

12] The plaintiffs have filed the 7/12 extract of suit property with Sr. No. 6 with Exh. 23. In the 12th column of this 7/12 extract the name of the plaintiffs are not nowhere recorded. Indeed the name of Kashinath Gaibi Mate is recorded in the 12th column of suit property.

13] The learned counsel for the plaintiffs argued that, if the defendant No. 1 to 3 would have been cultivating the suit property then there could be the specific entry of the crops taken by defendant No. 1 to 3 in the 12th column of 7/12 extract of suit property. But the word grass land i.e. *Gavat Pad* is mentioned. This shows that it was not cultivated by defendant No. 1 to 3.

14] No doubt there is entry of grass land in the 12th column of 7/12 extract of suit property but this only document is not

considerable for showing the possession of plaintiffs over the suit property, I have to consider all the documents filed by both parties. If as per the plaintiffs, they would be in possession of suit property then why their names are not recorded in the 12th column of 7/12 extract of suit property.

15] Even the particulars of statement of crops which are yielded by plaintiffs are not recorded in the 12th column of 7/12 extract of the suit property. If plaintiffs are cultivating the suit property then there should be entry of crops in the 12th column of suit property and not the entry of grass land in the 12th column of 7/12 extract of the suit property. So, these documents are not also helpful to the plaintiffs for showing their possession over suit property.

16] The plaintiffs have mentioned in plaint para No. 3, they are cultivating the suit property by their labourers. They have not mentioned the single name of their labour who made cultivation of suit property. Even they have not filed the affidavit of their labourers on record to support their contention. Moreover, they have also not filed the affidavit of adjacent land holder of suit property who would be best witness to show their possession over the suit property. The adjacent land holder are the best witness available to the plaintiffs who would have seen to the plaintiffs while cultivating the suit property. But they have not taken any pain to furnish the affidavit of adjacent land holder as well as the labourers who made labour work in the suit

property.

17] Even also the plaintiffs have not furnished the receipts from the shopkeeper who sold the beans, as well as insecticide and pesticide for taking the yield from the suit property. The plaintiffs in the plaint stated that defendant no. 1 to 3 have written before the police station officer that they will not obstruct the possession of the plaintiffs over the suit property. But they have not furnished such copy of statement on record which could be best document for them. All this shows that, the plaintiffs are not at any point of time in possession of suit property. Rather defendant No. 1 to 3 are in possession of suit property. Hence, the plaintiffs have no *prima facie* case in their favour. Even balance of convenience are not tilt in the side of plaintiffs. If temporary injunction application rejected then no prejudice will cause to the plaintiffs. Hence, I recorded my findings to point No. 1 to 3 in the negative. In the result the application Exh. 5 deserves to be rejected. So, I proceed to pass following order:-

ORDER

1. The application Exh. 5 is rejected.
2. Costs in cause.
3. Dictated and pronounced in open court.

Barshi.
Dt. 18-06-2022

(S.B.Vijaykar)
Jt. Civil Judge Junior Division,
Barshi.

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 / Order

(a)	Name of the Stenographer	:	B.B.Salvade
(b)	Court	:	S.B.Vijaykar, Jt.C.J.J.D.&J.M.F.C. Barshi.
(c)	Judgment /Order signed by P.O. on	:	18/06/2022
(d)	Judgment /Order uploaded on	:	20/06/2022