

ORDER BELOW EXHIBIT -5 IN R.C.S.No.450 of 2017

This application is filed by the plaintiff to restrain the defendants temporarily from causing obstruction in his possession over land Gat No.1/2 to the extent of 1 Hector 72 Are situated at Dhamangaon Tq. Barshi (hereinafter to be referred to as the suit land).

2. According to the plaintiff, he is the owner and the possessor of the suit land. Defendants are not having any concern with the suit land. Defendant Nos.2 & 3 are the sons of defendant No.1. Plaintiff and the defendants have entered into a compromise before the District Court, Solapur in Regular Civil Appeal No.202/2002 on 17.02.2011. Defendants have admitted his ownership and possession. However, defendants are taking undue advantage of muscle power and disturbing his peaceful possession over the suit land. Lastly, they have obstructed his possession on 07.05.2017. When plaintiff has requested them not to do so, they have ignored his request. It is therefore necessary to restrain the defendants temporarily. If they are not restrained, plaintiff would suffer irreparable loss. Hence the application.

3. Defendants have submitted their say (Exh.14) and resisted the application. They have filed amended say and written statement after the plaint was amended. They have admitted that the plaintiff is the owner and possessor of the suit land. However, they have contended that others are also owner of land Gat No.1/2 and that the plaintiff is not the sole and exclusive owner of land Gat No.1/2. According to them, plaintiff has shown land Gat No.1/E/2 on the Western side of the suit

land. However, record shows that land Gat No.1/E/2 is not in existence. There is land of the defendants bearing Gat No. 1/1 on the Eastern side of the suit land. They have instituted R.C.S.434/2017 against the present plaintiff before this court. Said suit is pending. Plaintiff has not disclosed the area of the land purchased by him from the defendants. There is contradiction in the area purchased by him and in the area of the suit land. Thus, the plaintiff has suppressed the material facts. He has not made parties all the land holders of land Gat No.1/2 and hence the suit is bad for non-joinder of necessary parties. Plaintiff has not measured his land. Boundaries of the suit land has not been fixed by the appropriate authority. Unless, the boundaries of the suit land is fixed by the authority, plaintiff cannot claim any relief. Ultimately, they have prayed for rejecting the application.

4. Perused the record and proceeding. Heard both the sides. The points that arise for consideration and my findings thereon together with the reasons are as follows -

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the plaintiff is having a <i>prima facie</i> case ?	Yes
2. Whether balance of convenience lies in favour of the plaintiff ?	Yes
3. Whether the plaintiff will suffer an irreparable loss, if injunction is not granted ?	Yes
4. What order ?	Application is allowed.

REASONS

AS TO POINT NO.1-

5. Plaintiff has tendered 7/12 extract of the suit land, photo-copies of R.C.S. No.291/1991, compromise deed filed before the District Court in Regular Civil Appeal No. 202/2002 and his Sale-deed. On the other hand, defendants have submitted certified copies of the suit filed by them.

6. Defendants have not disputed the ownership and possession of the plaintiff. They have also not disputed that the plaintiff has purchased the suit land from defendant No.1. They have raised technical points in respect of the contradiction between the area of the suit land and the land described in the Sale-deed of the plaintiff. However, they have not pointed out the area which was mentioned in the Sale-deed. Thus, their objection is vague and not specific. They have taken the objection that all the land holder of land Gat No.1/2 have not made parties. In a suit of this nature they are not necessary parties and the suit can be brought against the persons who are obstructing the possession. Lastly, they have taken the objection that the four boundaries mentioned in the body and in the prayer clause of application (Exh.5) do not match and hence the plaintiff is not entitled to get the interim relief. Objection is too technical to consider. Needless to mention that the plaintiff has corrected the four boundaries of the suit land by way of amendment of plaint and if he has failed, due to inadvertence, to correct the four boundaries of the suit land in the prayer clause of the application

(Exh.5), then it cannot be a ground to object the application. All the objections are without merit. In the circumstances, I find that the plaintiff is having a prima-facie case. Hence, point No.1 is answered in affirmative.

AS TO POINT NOS.2 and 3 -

7. As noted above, plaintiff is the owner and possessor of the suit land. His ownership is not denied. He is having every right to use and enjoy the suit land. If his possession over the suit land is obstructed, it would certainly cause irreparable loss to him. His claim is restricted to the land owned and possessed by him. If his possession is protected, it would not cause prejudice to anybody including the defendants. On the facts and in the circumstances, balance of convenience tilts in favour of the plaintiff. Hence, point Nos.2 and 3 are answered in affirmative. In view of my findings recorded against point Nos.1 to 3, application deserves to be allowed. Hence, the order.

ORDER

1. Application is allowed.
2. Defendants or anybody acting on their behalf are restrained temporarily till the disposal of the suit from causing obstruction and interference in the possession of the plaintiff over the suit land.

Date : 22.12.2017.

(S.K. Khan)
Jt.Civil Judge J.D.,
Barshi.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word to word as per original Judgment.

Name of Stenographer :
Court Name : S.K.Khan,
Jt.C.J.J.D.& J.M.F.C. Barshi.
Date : 22.12.2017
Judgment signed by the
presiding officer on : 22.12.2017
Judgment uploaded on : 22.12.2017