

MHSO130006482023



R.C.S. No.539/2023  
Kavita Nalage & ors.  
Vs.  
Pandhari Nalage & ors.

### **ORDER BELOW EXHIBIT-5**

This is an application for restraining defendant No.1 from obstructing the possession of the plaintiffs over the agricultural land bearing block No.294 ad-measuring 30 R land of mouje Khamgaon, Tal.Barshi Dist. Solapur (hereinafter called as 'suit property').

#### **Few facts of the case are as under:**

02. Plaintiff No.1 is the mother of plaintiff No.2. They are the owner of suit property. The defendants have no concerned with the suit property. However, the name of defendant No.2 is recorded in the record of right of suit property. This is nominal entry of defendant No.2 in the 7/12 extract of the suit property. Defendant No.2 is taking advantage of this entry, she put forth to defendant No.1 against the plaintiffs. Defendant No.1 is creating obstruction to the possession of the plaintiffs over the suit property. On 27/08/2023, when the plaintiffs were in the suit property, the defendants came there and obstructed the plaintiffs from cultivating the suit property.

03. They have *prima facie* case being the owner of the suit property. Even balance of convenience lies in their favour. If temporary injunction would be rejected then, irreparable loss

will cause to them which cannot be compensated in terms of money. Hence, he prayed accordingly.

04. Defendant No.1 filed the written statement at Exh.17. He denied all the adverse allegations leveled against him. He submitted that the plaintiffs have suppressed material facts from the Court. The plaintiffs have not come with the clean hands. If the plaintiffs have not come with the clean hands, then the plaintiffs are not entitled for equitable relief of injunction.

05. In his specific pleading, he submitted that Goroba Sadhu Nalage was the owner of block No.294 and 289 of mouje Khamgaon. He died on 28/03/1982. Thereafter, the husband of plaintiff No.1 became the owner of above said properties. He died on 01/02/1989 leaving behind the plaintiffs and defendant No.2. The plaintiffs and defendant No.2 became the owner of block No.294 and 289 after the death of Tanaji and their names are recorded in the record of right of suit property and block No.289.

06. In the year 2010, the marriage of plaintiff No.2 was arranged. The plaintiffs were in need of money for performing the marriage of plaintiff No.2. So they agreed to sell the suit property as well as block No.289 to defendant No.1. Accordingly on 01/04/2010, the agreement to sell was executed between the parties and that time defendant No.1 paid amount of Rs.2,00,000/- to the plaintiffs and agreed to execute the sale-

deed of both agricultural lands after the decision passed in R.C.S. No.137/2008 (new R.C.S. No.586/2012). The plaintiffs handed over the possession of suit property as well as block No.289 to defendant No.1. On 16/01/2011, defendant No.1 paid remaining amount of Rs.1,10,000/- in the presence of witnesses.

07. The above said suit dismissed. In spite of dismissal of the suit, the plaintiffs evaded to execute the sale-deeds of above said properties. The plaintiffs asked defendant No.1 to pay higher amount for execution of the sale-deeds of both properties. At last, on 27/10/2017, the plaintiffs have executed the sale-deed of agricultural land bearing block No.289. Despite this, the plaintiffs filed suits bearing R.C.S. No.712/2017 as well as 792/2019. Those suits are dismissed in default for want of prosecution. Defendant No.1 is in possession of the suit property. The plaintiffs have suppressed these material facts from this Court. So the plaintiffs have no *prima facie* case. Even balance of convenience is not lies in their favour. If temporary injunction application rejected then, no irreparable loss will be caused to the plaintiffs. Hence, prayed for rejection of the application.

08. Defendant No.2 appeared but has not filed written statement. So suit is proceeded with her written statement by passing order below Exh.1 on 21/12/2023.

09. Following points are arisen for my consideration. I

have recorded my findings with reasons there on.

| Sr. No. | Points                                                                                                                                                                    | Findings                 |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| 1       | Whether the plaintiffs prove that they have <i>prima facie</i> case in their favour?                                                                                      | In the negative.         |
| 2       | Whether the plaintiffs prove that, the balance of convenience lies in their favour?                                                                                       | In the negative.         |
| 3       | Whether the plaintiffs prove 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?                                                                                                                                                    | Application is rejected. |

## :: REASONS ::

### As to point No. 1 to 4:-

10. All these points are inter connected with each other, hence I have taken it together for my discussion.

11. Heard both parties. The plaintiffs relied upon the documents annexed with list Exh.4. On the other hand, defendant No.1 relied upon the documents annexed with list Exh.19. After going through the documents filed by both parties, it appears to me that suit property is recorded in the names of the plaintiffs and defendant No.2. There is no pleading of the plaintiffs that deceased Tanaji has executed the Will of suit property and after his death, the plaintiffs became

the owner of suit property. If there is no pleading of Will, then obviously the suit property will be inherited by the plaintiffs and defendant No.2 being class-I heir of deceased Tanaji. Defendant No.2 is the mother of deceased Tanaji. If defendant No.2 is the mother of Tanaji, then she has undivided share in the suit property. The plaintiffs would not become the sole owner of the suit property. The plaintiffs and defendant No.2 having undivided share in the suit property. So there is no force in the contention of the plaintiffs that they are the sole owner of the suit property and defendant No.2 is not concerned with the suit property.

12. Defendant No.1 has furnished documents with list Exh.19. Document No.3 is the certified copy of Exh.01 of R.C.S. No.712/2017. The above said suit was instituted against defendant No.1. That suit was for perpetual injunction in respect of suit property and block No.289 of mouje Khamgaon. The said suit is dismissed in default on 16/12/2021. Then there is another round of litigation between the plaintiffs and the defendant. That suit was bearing R.C.S. No.792/2019 between the present plaintiffs and the defendants which is dismissed in default on 15/12/2022. That suit was also for perpetual injunction. In both suits, the pleading was tendered by the plaintiffs that defendants are obstructing their possession over the suit property. The pleading of the present suit is same.

13. When suit is dismissed in default for want of prosecution under Order IX Rule 08 of the Code of Civil

Procedure, then the plaintiffs have no right to instituted fresh suit on same cause of action.

14. The pleading of this suit is identical. Only the plaintiffs have mentioned different date of obstructing the possession of the plaintiffs over the suit property. I will not ponder on the issue whether present suit is maintainable or not. Only question is that whether the plaintiffs are in possession of the suit property.

15. Document No.1 annexed with list Exh.19 shows that plaintiff No.1 had agreed to sell the suit property and agricultural land bearing block No.289 with defendant No.1 for the consideration of Rs.3,10,000/- and out of that amount, plaintiff No.2 accepted the amount of Rs.2,00,000/- from defendant No.1 on 01/04/2010. That time, the plaintiffs parted with the possession of the suit property.

16. The plaintiffs have not denied these facts by making amendment to the plaint. Even they have not filed any rejoinder in this case to show that they are denying the facts alleged by defendant No.1 in the written statement. This means as per this document, the plaintiffs are not in possession of the suit property. Defendant No.1 is in possession of the suit property. The plaintiffs have suppressed material facts from this Court that they entered into agreement with defendant No.1 for selling of suit property. They also suppressed the facts from the Court that there was round of litigation between

the plaintiffs and defendant No.1.

17. The relief of temporary injunction is discretionary relief based on principles of equity, justice and good conscience. ***The Hon'ble Supreme Court in M/s. Gujrat Bottling Company, Ltd. Vs. Coca Cola Company AIR 1995, Supreme Court 2372*** held in para No. 50 that,

*“Under Order XXXIX of the Code of Civil Procedure, jurisdiction of the court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order XXXIX Rule 1 or Rule 2 of The Code of Civil Procedure, but also in respect of the party approaching the court for vacating the ad-interim or temporary injunction order already granted in the pending suit of proceedings”.*

18. In this case also, the plaintiffs have suppressed material facts that they had agreed to sell the suit property to defendant No.1. They also suppressed that they had instituted

several litigation against defendant No.1 as well as defendant No.2. They have no come with the clean hands. Their conduct is not blame free. If their conduct is not as a prudent man, then the plaintiffs are not entitled for equitable relief based on the principle of equity, justice and good conscience. I am also opinion that the plaintiffs are not in possession of the suit property. If they are not in possession of the suit property, then no question arises to disturb the possession of the plaintiffs by defendant No.1. Hence, the plaintiffs have *prima facie* case. Even balance of convenience is not lies in their favour. If temporary injunction would be rejected then, no irreparable loss will cause to the plaintiffs. Thus, I recorded my findings to point No. 1 to 3 in the negative. In the result, application Exh.5 deserves to be rejected. Hence, I proceed to pass following order:-

### **ORDER**

- 1) Application Exh. 5 is rejected with costs.
- 2) Costs in cause.

(Dictated and pronounced in open Court.)

Barshi.  
Date : 07/11/2024.

( S.B. Vijaykar )  
Jt. Civil Judge (J.D.), Barshi.

**CERTIFICATE**

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          | : | Shri.S.R. Barangule                                    |
| (b) | Court                             | : | Shri. S.B.Vijaykar,<br>Jt.C.J.J.D.&J.M.F.C.<br>Barshi. |
| (c) | Dictated on                       | : | 07/11/2024                                             |
| (d) | Transcription completed on        | : | 07/11/2024                                             |
| (e) | Judgment /Order signed by P.O. on | : | 11/11/2024                                             |
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