

CNR NO. MHSO130006822021

Kamble V/s. Bhadakwad

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, BARSHI, AT SOLAPUR
ORDER BELOW EXH.5 IN R.C.S No. 555/2021

This order shall dispose of an application under Order XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC' for the sake of brevity and convenience) for temporary injunction, in order to restrain the defendant from obstructing the plaintiff by himself to his peaceful possession of property which has been described in paragraph no.1 of the plaint.

2. A land admeasuring 0.81 R in Gat no.109/3 of the north side situated at village Surdi, Taluka Barshi, District Solapur is the suit property. (hereinafter called as 'suit property').

The brief facts of case of plaintiff are as follows:

3. The suit is for perpetual injunction. The suit property was purchased by the plaintiff from one Parmeshwar Prabhakar Tupsamudre on 29/12/2020 for an amount of Rs.3,25,000/-. Parmeshwar Tupsamudre executed the sale deed in favour of plaintiff before the Sub Registrar by registering the sale deed no.2226/2020. Through that sale deed, the name of plaintiff was recorded on 7/12th extract vide M.E. No.10586. On the day of purchase itself, plaintiff was handed over the possession of the suit property. Parmeshwar Tupsamudre purchased the suit property from the defendant on 25/10/2013. Since then, defendant has no relation with the suit property. Since purchase of the suit property, defendant is obstructing the plaintiff in his peaceful possession over the suit property. Plaintiff has taken good care of the suit property and he is earning good income out of the suit property. Due to it, the defendant is obstructing the plaintiff. Defendant wanted to purchase the suit property at lower price. Defendant is abusing, threatening and obstructing the plaintiff. On 10/10/2021 when plaintiff was taking out the soyabean crops from the suit property, defendant came and asked plaintiff as to why he purchased the suit property. Defendant thereafter started threatening the plaintiff. Acts of the defendant are illegal and needs to be restrained in order to have peaceful possession over the suit property. Hence, plaintiff has prayed to allow the application.

4. Say of Defendant :-

Defendant filed his say on the application at Exh.18. Defendant submitted that, the suit property belongs to him and it is the self acquired property of the defendant. Defendant purchased the suit property in the year 2010 from one Changdev Bhagwan Kadam by registered sale deed. Since then, defendant is in possession of the suit property. Defendant resides with his family in the suit property. In order to deal with his financial problems, defendant asked for Rs.3,00,000/- from Parmeshwar Tupsamudre who was a money lender. Parmeshwar Tupsamudre demanded 5% of interest on the amount to be lent by him. Parmeshwar Tupsamudre also demanded that, the defendant will have to enter into a sale deed of the suit property in his favour and when the amount is repaid by the defendant to Parmeshwar Tupsamudre, he will again execute the sale deed of the suit property back in favour of the defendant. It was decided that, the possession of the suit property will remain with the defendant. The suit property was never possessed by Parmeshwar Tupsamudre. Parmeshwar Tupsamudre did not know where the suit property was situated. One Anandrao Mastud used to meet the defendant and recover the amount alongwith interest from the defendant on behalf of the money lender Parmeshwar Tupsamudre. Defendant had agreed upon the terms fixed by Parmeshwar Tupsamudre due to his financial problems. The sale deed was merely a hollow one and it was not meant for the actual transfer of suit property by way of sale. Defendant had no other source of income apart from the suit property. Defendant has timely repaid the amount and given it to Anandrao Mastud. Parmeshwar Tupsamudre never obstructed the defendant in his possession over the suit property. Defendant has paid Rs.2,02,700/- to Parmeshwar Tupsamudre out of the amount taken from him. Parmeshwar Tupsamudre did not give any prior intimation to the defendant. It was decided between Parmeshwar Tupsamudre and defendant that, the suit property will not be sold to any third person. However, Parmeshwar Tupsamudre deceived the defendant and sold the suit property without possession to the plaintiff. Plaintiff was having knowledge about the transaction between defendant and Parmeshwar Tupsamudre. Defendant is illiterate and poor person. Defendant is looking after the suit property and cultivating it. Plaintiff has never come to the suit property. Defendant is still in possession of the suit property. Application filed by plaintiff is a false one. Hence,

the balance of convenience is in favour of defendant. Irreparable loss would be caused to defendant if the application is allowed because defendant has only one source of income which is the suit property. Hence, defendant has prayed to reject the application.

5. Heard both the sides. Perused the record and proceeding of the case. The points for determination along with findings and reasons thereon are as under:

Sr.No	Points	Findings
1.	Whether the plaintiff has a prima facie case?	Yes
2.	Whether the balance of convenience lies in favour of plaintiff?	Yes
3.	Whether plaintiff will suffer irreparable loss if injunction is refused?	Yes
4.	What order?	As per final order.

6. Plaintiff has filed relied upon the documents vide list of documents at Exh.04 Exh.18, Exh.33 and Exh.37. Plaintiff has filed copy of 7/12th extract of suit property (Exh.4/1), 6D extract of mutation entry no.10586 (Exh.4/2), xerox of paper notice prior to purchase (Exh.4/3), copy of sale deed no.2226/2020 (Exh.4/4), application by defendant to Tehsildar dated 04/03/2021 (Exh.4/5), application filed by defendant before Circle Officer (Exh.4/6), order of Circle Officer (Exh.4/7), copy of sale deed no.1426/2013 (Exh.8/1) and copy of correction deed (Exh.25/1).

7. Defendant has filed sale deed no.1423/2013 (Exh.21/1), sale deed no.2226/2020 (Exh.21/2), sale deed no.11/2010 (Exh.21/3), photographs of crops and land (Exh.21/4), receipts of crop purchase and cultivation (Exh.21/5), details of amount given by defendant to moneylender (Exh.21/6), entry of crop insurance amount received by defendant from the bank (Exh.21/7), sale deed no.1157/1994 (Exh.23/1), *adat* receipt of sale of onions (Exh.23/2) and copy of Maharashtra Tenancy and Agricultural Lands Act – Section 63 (Exh.27/1).

REASONS

8. Arguments of Plaintiff:

- Suit property is in possession of plaintiff. Defendant had complained at the time of mutation entry however, after deciding the objection, the name of the

plaintiff was recorded on the revenue record.

- The suit property belonged to the defendant. However, defendant sold it to Parmeshwar Tupsamudre. Plaintiff purchased suit property from Parmeshwar Tupsamudre.
- If there was a money lending transaction, defendant would have taken some legal action. But no legal action was taken in those 8 years.
- The suit property number is not mentioned in the receipts filed by the defendant. Receipts can be prepared anyhow.
- No document is on record which shows the possession of defendant.
- Prima-facie case and balance of convenience is in favour of plaintiff. Irreparable loss would be caused to the plaintiff if injunction is refused.

9. Arguments of Defendant:

- Court granted ad-interim injunction without hearing the defendant.
- Nothing has happened according to what is written in the sale deed no.1426/2013. The sale deed was entered into only for the purpose of security.
- Defendant is in possession of suit property and he has a house therein. There is no question of title.
- Defendant has filed bills which are since the year 2013.
- Defendant is illiterate. One Lakh rupees is due from defendant to Parmeshwar Tupsamudre. Anantrao Mastud is agent of Parmeshwar Tupsamudre. Defendant has filed details of money paid to the moneylender.
- Parmeshwar Tupsamudre cheated defendant and sold the suit property without its possession to plaintiff.
- In order to purchase an agricultural land, one must be an agriculturist. However, plaintiff is not an agriculturist. Plaintiff has deceived the Government. Plaintiff has not come with clean hands. Plaintiff says he has joint family property. However, in sale deed No. 1157/1994, it is mentioned as self-acquired.
- The photographs, invoice having GST numbers filed by defendant shows the possession of defendant.
- Defendant did not complain about Parmeshwar Tupsamudre because he

trusted Parmeshwar Tupsamudre and there was understanding between both of them.

- Gat no.105/6 is the property of defendant's father. The suit property is self-acquired property of defendant.
- Plaintiff has no prima-facie case. Hence, application of plaintiff be rejected.

POINT NO.1 TO 3:

10. Plaintiff is seeking temporary injunction to restrain the defendant from obstructing his peaceful possession over suit property. In order to grant temporary injunction, regard shall always be had to the principle of probability of success and a bonafide case. Probability of success will depend upon the material on record and a bona fide case will depend upon principles of equity. In order to grant temporary injunction, there must be existence of some legal right in favour of plaintiff. In order to decide a prima-facie case, the material placed before the Court need to be taken into consideration. The 7/12th extract of suit property(Exh.4/1), appears to mention the name of plaintiff on the suit property. It does not appear to mention the name of defendant. It is admitted by defendant that; suit property was sold to plaintiff by Parmeshwar Tupsamudre. However, it is the objection of defendant that, the suit property was not sold by him to Parmeshwar Tupsamudre. It is contended by defendant that, Parmeshwar Tupsamudre is a money lender and the transaction between them was only meant for the mortgage because an amount of Rs.3,00,000 along with interest was taken by defendant from Parmeshwar Tupsamudre. It is further contended that, Parmeshwar Tupsamudre deceived the defendant and sold the suit property to plaintiff. The mutation extract i.e. 6D extract of mutation entry no.10586 (Exh.4/2) appears to clearly mention the nature of transaction, the name of plaintiff as purchaser and the name of Parmeshwar Tupsamudre as seller, the amount of sale, the sale deed number, the area and the gat number.

11. The copy of sale deed no.2226/2020 (Exh.4/4) between plaintiff and Parmeshwar Tupsamudre appears to mention the transaction of sale between plaintiff and Parmeshwar Tupsamudre. It was argued by defendant that, there is mention of one person namely Kiran Shantaram Pendharkar in the sale deed no.2226/2020 and it is mentioned that, Parmeshwar Tupsamudre purchased

property from him. Defendant further argued that, the sale deed is illegal because there is no relation of person namely Kiran Pendharkar with suit property. In this regard, plaintiff argued that, the name of Kiran Pendharkar on the sale deed was actually a typing mistake because both parties did not know who that person is. It is also the pleading of plaintiff that, Parmeshwar Tupsamudre purchased the suit property from the defendant. In response to the argument of defendant about mentioning the name of Kiran Pendharkar on the sale deed no.2226/2020, plaintiff filed a copy of correction deed no.107/2022 (Exh.25/1) dated 20/01/2022 between plaintiff and Parmeshwar Tupsamudre, which appears to mention that, the suit property was actually purchased by Parmeshwar Tupsamudre from defendant vide sale deed no.1426/2013 and that the mistake in sale deed no.2226/2020 was due to computer typing mistake. Upon perusal of above documents, it prima-facie appears at this stage that, the case is not concerned with the person namely Kiran Pendharkar. The 7/12th extract of suit property, sale deed no.2226/2020, the 6D extract primarily appears to support the contentions of plaintiff. Moreover, the order of Circle Officer dated 25/03/2021 (Exh.4/7) in application no. सुडी/त.फे.नं.१०५८६/एस.आर./१/२१ filed by defendant also appears to mention that the suit property is sold to plaintiff by sale deed no.2226/2020 by Parmeshwar Tupsamudre. The order of Circle Officer also appears to be in favour of plaintiff.

12. Plaintiff has filed copy of sale deed no.1426/2013 (Exh.8/1), which appears to be the transaction of sale between the defendant and Parmeshwar Tupsamudre regarding suit property. Upon perusal of sale deed no.1426/2013, it is prima-facie seen that, there is neither any express mention, nor any indication that, the transaction between the defendant and Parmeshwar Tupsamudre is not of sale but of a mortgage. Hence, the contention of defendant that, there was actually no transaction of sale but only of a mortgage, is difficult to believe at this stage because there appears to be no prima-facie satisfaction of this Court in that regard due to absence of material in support of those contentions. In this regard, a question arises at this stage that, if actually had the sale deed was not meant for sale but only for a mortgage, then, after being deceived by Parmeshwar Tupsamudre, why the defendant did not file a suit ? Moreover, there is no prima-facie material on record to support the contention of defendant that, Parmeshwar Tupsamudre is a

moneylender.

13. The plaintiff has filed a suit for perpetual injunction. He came with an application for temporary injunction. Hence, he has to prove his prima-facie case. A prima-facie case is based upon what appears to be apparent or prima-facie on the basis of material on record. Upon perusal of documents on record filed by the plaintiff, it prima-facie appears that the plaintiff is in possession of suit property.

14. On the other hand, the photographs filed by defendant about his land and crops (Exh.21/4), the receipts of purchase of crops and cultivation (Exh.21/5) as well as the details of amount given by defendant to money lender which appears to be handwritten (Exh.21/6) and the entry of receiving crop insurance amount from the bank (Exh.21/7) as well as the *adat* receipt of sale of onions by defendant (Exh.23/2) does not prima-facie indicate the possession of defendant over suit property at this stage. Those documents do not carry such level of presumptive value which the 7/12th extract, sale deed, mutation extract carry at this stage. The copy of sale deed no.11/2010 indicates that, defendant had purchased the suit property in the year 2010 from one Changdeo Bhagwan Kadam. As the sale deed no.11/2010 prima-facie indicate that defendant purchased suit property from one Changdeo Kadam in the year 2010, similarly, the sale deed no.1426/2013, prima-facie indicate that, suit property was purchased by Parmeshwar Tupsamudre from defendant in the year 2013 and the sale deed no.2226/2020 prima-facie indicate that, suit property was purchased by plaintiff from Parmeshwar Tupsamudre. Hence, the same prima-facie finding is applied to all of those sale deeds. There appears to be no sufficient reason and material at this stage, to deviate from the aforesaid prima-facie finding about those sale deeds. Defendant has also filed copy of sale deed no.1157/1994 (Exh.23/1), however, it does not appear to be related to the suit property in the present case. Hence, the aforesaid documents relied upon by the defendant are not sufficient to support his story at this stage.

15. Defendant has relied upon the judgment of Hon'ble Supreme Court in Rame Gowda v. Varadappa Naidu (D) by Lrs. and Anr (Civil Appeal No.7662 of 2003) and the judgment of Puran Singh and ors. v. State of Punjab (Criminal Appeal No.266 of

1971). In that respect, Counsel for defendant has argued that, settled possession is important to be considered because defendant is in settled position of the suit property and that title need not be decided at this stage. I have gone through the judgments in Rame Gowda (supra) and Puran Singh (supra). With greatest respect, the facts of the present case are different from the facts in the aforesaid judgments. The judgment of Hon'ble Supreme Court in Rame Gowda (supra) deals with the remedy available to a trespasser to seek injunction when he is in settled possession even against a rightful owner from using force. The judgment in Puran Singh (supra) which is of a criminal nature, mentions that, the trespasser in a settled possession of the land cannot be evicted except in due course of law. In the present case, the defendant himself states in his say (Exh.18) on the present application that, he is in possession of the suit property as an owner. If that is the case, then why defendant is relying upon the principle of settled possession as a trespasser? On one hand, defendant states that he is owner and he is in possession of suit property as an owner and on the other hand, he takes support of the principle of trespasser in a settled possession. This itself creates a doubt at this stage over the case of defendant. Further the argument of defendant that, plaintiff is not an agriculturist and still he purchased the suit property and hence, the sale deed is illegal, is not satisfactory and convincing considering the material placed by the other side on record. A prima-facie case need to be proved on the basis of material available on record. The documentary material filed by plaintiff i.e. 7/12th extract, mutation entry extract and the sale deed no.2226/2020 prima-facie indicate possession of the plaintiff at this stage. Hence, as there is prima-facie possession of plaintiff, he has a legal right existing in his favour to protect his possession over the suit property from obstruction by anyone including the defendant.

16. In order to decide, who has the balance of convenience, the Court has to decide who will suffer great hardship in case injunction is not granted. A prima-facie case is proved by plaintiff. The comparative inconvenience or hardship which is likely to arise from refusing the present application will be greater than the one likely to arise from allowing it. The contentions of defendant about his possession over suit property as an owner appear to be unsatisfactory at this stage due to the reasons discussed aforesaid. If application is refused, it would mean to allow

defendant to obstruct the plaintiff's possession over the suit property, which is prima-facie proved by the plaintiff. Hence, the plaintiff would be at inconvenience if the temporary injunction is refused.

17. As far as point of irreparable loss is concerned, if the plaintiff's possession over the suit property, which is prima-facie proved, is obstructed, it will cause irreparable loss to the plaintiff, as it would affect the plaintiff's right to possession over the suit property. Hence, irreparable loss might ensue to the plaintiff. Hence, on aforesaid reasons, I answer point no.1 to 3 in affirmative and in response to point no.4, I pass the following order:

ORDER

1. The application is allowed.
2. Defendant shall not obstruct plaintiff in his peaceful possession of suit property in any manner till final disposal of suit.

(Pronounced in open Court)

Place: Barshi
Date: 27/01/2022

(N.S. Sabnis)
4th Jt. Civil Judge Junior Division, 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	:	Y. V. Sital, Steno Grade-III
(b)	Court	:	4 th Jt. C.J.J.D. & J.M.F.C., Barshi.
(c)	Judgment /Order signed by P.O. on	:	27/01/2022
(d)	Judgment /Order uploaded on	:	28/01/2022