

ORDER BELOW EXH.5 IN R.C.S. NO.36/2023
(Satlingappa Paramshetti And Anr. v. Shrimant Paramshetti)

This is an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure for restraining the defendant from causing obstruction in peaceful possession of plaintiffs in suit properties.

Suit Properties :-

02. Suit properties comprise of plot No.13 admeasuring 222.09 sq.mtr. and plot No.12/1 admeasuring 103.04 sq.mtr., in Gat No.551/2/B, situated at village Dudhani (Paan), Tal. Akkalkot, more particularly described in paragraph No.1 of the plaint (hereinafter referred to as '**plot No.13 and plot No.12/1**', respectively, for sake of brevity).

Facts put forth by plaintiffs in short are as follows :-

03. It is contended that, plaintiff Nos.1 and 2 have purchased plot No.13 from one Sidramappa Bandeppa Malage vide sale-deed dated 25.01.1991. Accordingly, names of plaintiffs were recorded in revenue record of plot No.13 as per Mutation Entry No.1224. Since then, plaintiffs became owners and possessors of plot No.13.

04. Plaintiff No.1 has purchased plot No.12/1 from Sidramappa Bandeppa Malage vide sale-deed dated 28.05.1992. Name of plaintiff No.1 came to be recorded in revenue record of plot No.12/1 as per Mutation Entry No.1230. Since then, plaintiff No.1 became owner and possessor of plot No.12/1.

05. It is further contended that, the defendant is husband of plaintiff No.2. Plaintiff No.1 is nephew of the defendant and plaintiff No.2. The defendant has developed illicit relationship with Savitri. The defendant is residing with Savitri under one roof. The defendant has no concern with plot Nos.12/1 and 13. However, he is unlawfully causing obstruction in peaceful possession of plaintiffs in plot Nos.12/1 and 13. The defendant is trying to dispossess plaintiffs from plot Nos.12/1 and 13. He is abusing plaintiffs and threatening to kill them. On 06.04.2023, the defendant tried to beat plaintiffs with stick and stones for leaving plot Nos.12/1 and 13. Hence, plaintiffs constrained to file the instant suit and present application.

Defence of the defendant, in short, is as follows :-

06. The defendant has strongly resisted present application by filing his say vide Exh.13. He contended that, he has purchased plot No.13 in the name of plaintiffs and plot No.12/1 in the name of plaintiff No.1 from income earned by the defendant and his brother Babu from their agricultural land. Babu is father of plaintiff No.1. At the time of sale-deeds of plot Nos.12/1 and 13, plaintiff No.1 was minor. Hence, name of Babu has been mentioned as guardian of plaintiff No.1 in said sale-deeds. Since long, the defendant is in possession of plot No.13. Plaintiff No.1 is residing in plot No.12/1 and the defendant is residing in plot No.13. The defendant has never caused any obstruction in possession of plaintiff No.1 in plot No.12/1. On the contrary, taking undue advantage of old age of the defendant, plaintiffs are trying to dispossess the defendant from plot Nos.12/1 and 13. Plaintiffs, mother

of plaintiff No.1 namely Girijabai, sons of plaintiff No.1 namely Gurushant and Channappa and nephew of plaintiff No.1 namely Shrishail Upendra Birajdar are causing obstruction in peaceful possession of the defendant in plot No.13. Hence, the defendant has filed complaint in the office of the Superintendent of Police, Solapur on 25.01.2023. The defendant has also filed complaint in the Police Station, Akkalkot South on 08.03.2023.

07. It is further contended that, doctors informed the defendant and plaintiff No.2 that, plaintiff No.2 cannot conceive. At that time, plaintiff No.2 refused to reside with the defendant and she asked him for providing separate house for her residence. Hence, one agreement came to be executed between the defendant and plaintiff No.2 on 19.03.2004 for providing residence, grains, etc. to plaintiff No.2 by the defendant. As per said agreement, the defendant has given his ancestral house bearing Property No.54 situated in Ward No.15, Kumbhar Galli for residence to plaintiff No.2. Plaintiff No.2 is residing with her mother in said house. The defendant is also taking care of livelihood of plaintiff No.2. Thus, plaintiff No.2 is not residing in plot Nos.12/1 and 13.

08. The defendant further contended that, plot Nos.12/1 and 13 are situated adjacent to Dudhani Railway Station road. Hence, price of plot Nos.12/1 and 13 are on rise. Plaintiffs are intending to sale plot Nos.12/1 and 13. Hence, plaintiffs are trying to dispossess the defendant from plot Nos.12/1 and 13. Plaintiffs have no locus standi to file present application. The application is devoid of merits. Hence, the defendant prayed that, the application may be rejected with costs.

09. Points for determination along with my findings and reasons thereon are as follows :-

	POINTS	FINDINGS
1)	Whether plaintiffs have made out prima facie case ?	...Yes.
2)	Whether balance of convenience lies in favour of plaintiffs ?	...Yes.
3)	Whether plaintiffs will suffer irreparable loss, if injunction is not granted ?	...Yes.
4)	What Order ?	... Application is allowed.

10. In order to strengthen and substantiate the claim, plaintiffs have filed on record affidavit of plaintiff No.1 at Exh.05-A. They have also placed reliance upon documents filed along with lists of documents (Exh.04 and 22).

11. On the other hand, the defendant has filed his affidavit at Exh.14 to fortify his contentions. He has also placed reliance upon documents filed along with lists of documents (Exh.16 and 17).

12. Heard learned advocates for both parties at length. Arguments are set forth in consonance of their pleadings.

:: REASONS ::

AS TO POINTS NO. 1 TO 3 :-

13. These points are inter-linked, hence they are taken together for discussion in order to avoid repetition.

14. It is the case of plaintiffs that, they are owners and possessors of plot No.13 by virtue of registered sale-deed dated 25.01.1991. Furthermore, plaintiff No.1 is owner and possessor of plot No.12/1 by virtue of registered sale-deed dated 28.05.1992. On the other hand, the defendant contended that, plot Nos.13 and 12/1 have been purchased by himself and his brother Babu in the name of plaintiffs out of the income from agricultural land of the defendant and Babu.

15. Plaintiffs have filed on record 7/12 extracts and Form No.8-A extracts of plot Nos.12/1 and 13, certified copies of Mutation Entry Nos.1224 and 1230 and xerox copy of sale-deed of plot No.12/1 and plot No.13 along with list of documents (Exh.04). At the face of record it appears that, the defendant has not denied execution of sale-deed of plot No.13 in the names of plaintiffs and sale-deed of plot No.12/1 in the name of plaintiff No.1. It is the case of the defendant that, said plots have been purchased by the defendant and his brother Babu in the name of plaintiffs out of the income from agricultural land of the defendant and Babu. However, at the face of record it appears that, in sale-deeds of plot Nos.12/1 and 13 it nowhere mentioned that plot Nos.12/1 and 13 have purchased out of income from agricultural land of the defendant and Babu. Hence, prima facie it appears that, contention of the defendant that plot Nos.12/1 and 13 have been purchased by him and his brother Babu in favour of plaintiffs does not find any force.

16. According to plaintiffs, they are in possession of plot Nos.12/1 and 13. On perusal of 7/12 extracts and Form No.8-A extracts

of plot Nos.12/1 and 13, certified copies of Mutation Entry Nos.1224 and 1230 and xerox copy of sale-deed of plot No.12/1 and plot No.13 filed along with list of document (Exh.04) prima facie it appears that, Sidramappa Bandeppa Malage has handed over possession of plot No.13 to plaintiffs and plot No.12/1 to plaintiff No.1 by virtue of sale-deeds. It further appears that, names of plaintiffs came to be recorded in revenue record of plot No.13 as per Mutation Entry No.1224 and name of plaintiff No.1 came to be recorded in revenue record of plot No.12/1 as per Mutation Entry No.1230. Names of plaintiffs find mention in holder's column in 7/12 extract and as Khatedar in Form No.8-A of plot No.13. Name of plaintiff No.1 find mention in holder's column in 7/12 extract and as Khatedar in Form No.8-A of plot No.12/1. Plaintiffs have also filed on record affidavits of Tarabai Gurushtappa Paramshetti and Girijabai Baburao Paramshetti along with list of documents (Exh.22). Tarabai is sister and Girijabai is relative of the defendant. Tarai and Girijabai stated that, plaintiffs are in possession of plot Nos.12/1 and 13 and not the defendant.

17. On the other hand, even though the defendant has contended that, he is in possession of plot Nos.12/1 and 13, he has not filed on record any evidence to prima facie show that, he is in possession of plot Nos.12/1 and 13. Hence, prima facie there is nothing on record to show that, the defendant is in possession of plot Nos.12/1 and 13.

18. Per contra, on perusal of pleadings of both sides prima facie it appears that, plaintiff No.2 and the defendant are not residing together. It further appears that, plaintiff No.2 and the defendant are

living separately. Moreover, as discussed above prima facie it shows that, plaintiff No.1 is in possession of plot No.12/1 and plaintiffs are in possession of plot No.13. Hence, at this preliminary stage, case of plaintiffs appears to be more probable that, they are in possession of plot Nos.12/1 and 13 and not the defendant. Therefore, in view of above peculiar facts and circumstances it appears that, plaintiffs are having prima facie case.

19. Plaintiffs contended that, the defendant is causing obstruction in their peaceful possession in plot Nos.12/1 and 13 and he is trying to dispossess them from said plots. Tarabai and Girijabai have fortified above contention of plaintiffs. Plaintiffs have also filed on record copy of Non-cognizable Report No.47/2023 dated 23.01.2023 lodged by plaintiff No.2 against the defendant and Savitri Shrimant Paramshetti, Non-cognizable Report No.347/2022 dated 18.06.2022 lodged by plaintiff No.1 against the defendant and Siddhappa Virbhadrappa Yagadi and complaint dated 20.08.2023 filed by plaintiffs against the defendant in Police Station, Akkalkot South. On perusal of above reports, the complaint and at the face of record it appears that, there is a serious dispute between plaintiffs and the defendant in respect of plot Nos.12/1 and 13. Therefore, it is necessary to preserve nature of plot Nos.12/1 and 13 till final disposal of the suit.

20. In view of above discussion and on careful consideration of above facts and circumstances prima facie it appears that, plaintiffs are in peaceful possession of plot Nos.12/1 and 13. At the face of record it further appears that, the defendant is causing obstruction in peaceful

possession of plaintiffs in plot Nos.12/1 and 13. In such circumstances, if temporary injunction as prayed by plaintiffs is not granted, plaintiffs will not be in a position to reside peacefully in plot Nos.12/1 and 13. Hence, it appears that, balance of convenience lies in favour of plaintiffs and they will suffer an irreparable loss if temporary injunction as prayed by them is not granted. Resultantly, in view of above discussion, I answer point Nos.1 to 3 in affirmative.

AS TO POINT NO. 4 :-

21. In view of affirmative findings to point Nos. 1 to 3 and in the light of the principles relating to the grant of temporary injunction, it would be just and proper to allow present application. Resultantly, I pass following order :-

:: O R D E R ::

1. Application (Exh.5) is hereby allowed.
2. The defendant or anybody claiming through him is hereby restrained from causing obstruction in peaceful possession of plaintiffs in plot Nos.12/1 and 13, till final disposal of the suit.
3. Cost in cause.

(Dictated and pronounced in the open Court).

Date : 15.12.2023.

(Balasaheb S. Gaikwad)
Civil Judge Junior Division,
Akkalkot.

(9) Order Below Exh.5 in R.C.S No.36/2023.
[CNR-MHSO15-000899-2023]

C E R T I F I C A T E

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

Name of the Stenographer : Mrs. A.S.Magnur (Grade-III).
Court : Civil Judge Jr. Dn. and J.M.F.C., Akkalkot.
Order : 15.12.2023
Judgment/Order signed by P. O. on : 15.12.2023.
Judgment/Order uploaded on : 19.12.2023.