

**ORDER PASSED BELOW EXHS. 05 IN REG. CIVIL SUIT NO.  
114 OF 2021.**

The plaintiff moved out with prayer for restraining the defendants from obstructing his possession to the property B.No. 157/1/A adm. 81 R. situated at village Virvade (B), Tal. Mohol. The property is specifically described in the para no. 1 of the plaint. **(hereinafter to be referred as the 'Suit Property ' for brevity)**

02. According to the plaintiff the suit property was purchased by him from Sou. Vandana Thakare the sister of the defendant no. 3 and the cousin of defendant nos. 1 and 2. The property is purchased for valuable consideration of Rs. 18,60,000/-. Defendant no. 1 and 2 were intending purchase the property. But, the transaction amongst the defendant and the predecessor-in-title of the plaintiff was not reached. The defendants were enraged so in the month of January obstructed the possession of the plaintiff. After police complaint the defendants kept themselves away from the suit property. On 19/02/2021 the defendants obstructed the ploughing operation of the plaintiff in the suit property. The defendants are not concerned with the suit property. The defendant nos. 3 and 4, joining hands with the other defendants obstructing the possession with these material contentions the plaintiff prayed for the injunction.

03. Defendants by reply at Exh. 24 strongly opposed the application on the ground that, the plaintiff has no legal title to the suit property. It is contended that, the suit property was mortgaged with Raju Tukaram Kharade by the original owners

Suresh Awtade. The transaction amongst Raju Kharade and the Suresh was not for the consideration. The subsequent transaction by Raju Kharade in favour of Vandana and the transaction by Vandana in favour of the plaintiff is not legal. The plaintiff and Raju Kharade are the unauthorized money lender and they succeeded to obtain the sale-deed from Suresh. Suresh was addicted to the vice of drinking liquor under the influence of vice he executed the deed of the property.

04. It is further contention of the defendants that, the defendant no. 3 and 4 are the daughters of Suresh and they have undivided share in the suit property. Suresh was unable to cultivate the property accordingly defendant no. 3 and 4 and their sister Sindhubai Garad put the defendant no. 1 and 2 in possession of the property by way of agreement on the crops share basis (बटाई). Defendant no. 1 and 2 are in possession of the property on behalf of the other defendants. The plaintiff was never in possession of the property. The undivided shares of the parties have not fixed. So, the plaintiff can not claim possession over the property. With these material denial the defendants prayed for the rejection of the application.

05. Perused the application, say and the documents. Heard learned advocate for plaintiff and defendants. Following points arise for determination, I have recorded findings thereon along with reasons given thereunder :

Sr. No	Points	Findings
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1	Whether plaintiff have made out a prima-facie case ?	<b>YES.</b>
2	Whether the balance of convenience lies in favour of plaintiff ?	<b>YES.</b>
3	Whether plaintiff will suffer irreparable loss, if injunction is refused ?	<b>YES.</b>
4	What order ?	<b>As per final order.</b>

### R E A S O N S

06. To fortify the contention the plaintiff relied upon the documents in the form of revenue record, sale-deed and the copy of the N.C. On the other hand, the defendants have relied upon the copy of agreement.

07. Heard Ld. Advocate for the plaintiff and the defendants at length.

08. **As to Point Nos. 1 :-**

The existence of the prima-facie case is the sine qua non to claim the equitable relief of injunction. According to the submission of the Ld. Advocate for the plaintiff, the suit property was purchased by him for valuable consideration. The defendants are obstructionist . On the other hand, as per the submission of the defendants, the possession was never parted with, so the plaintiff not entitled for the equitable relief.

09. Having pondered over the documents, particularly, the copy of the 7/12 extract it appears that, the suit property is recorded in the name of plaintiff. Certainly, the revenue entries does not confer or extinguish the title. However, the revenue

entries have the presumptive value unless rebutted by way of cogent evidence. Record shows that, the suit property was purchased by the plaintiff from Vandana Suresh Thakare. The recitals of the sale deed No.4940/2018 reflects on the very day of sale the plaintiff was put in possession of the property. In rebuttal the defendants have relied upon the copy of agreement-cum-Bataipatra. The Ld. Advocate for the plaintiff invited the attention of the court to the thumb impression of Suresh Awtade and strenuously submitted that, Suresh Awtade is in habit to sign the document and in support he relied upon the sale-deed bearing no. 211/2002. Having gone through the Bataipatra the same bears the thumb impression of the Suresh Awtade the predecessor-in-title of the plaintiff. On comparing both the above referred documents. It appears that, Suresh Awtade used to sign the documents. It is not the case of the defendant that, presently Suresh Awtade is not in a position or is in such state of health that he could not sign the documents. Moreover, Suresh Awtade is far away from the proceeding. In such circumstances, the very documents placed on record by the defendants does not appeal to the reasons.

10. Admittedly, the first transaction by Suresh Awtade is with Raju Kharade thereafter, the property is transferred by the Raju in favour of Vandana and Vandana executed the deed of sale in favour of the plaintiff. By necessary implication I am of the view that, Suresh Awtade is the Karta of the joint family. He being the Karta of the family have every right to deal with the property provided the transaction is for the benefit of the family or the same should be within the orbit of legal requirements. Whether the transaction hits by the provision of law is the matter of trial. In the

case in hand, Suresh Awtade have transferred the property in favour of Raju Kharade and he put him in possession of the suit property. Subsequently, the plaintiff acquired the title and the possession of the property. In such circumstances, I am of the considered view that, the defendants have no evidence to rebut the presumption above referred.

11. The plaintiff to show his possession to the suit property have relied upon the oral evidence in the form of affidavit of Vandana Suresh Thakare, Dilip Awtade and Sindhubai Garad. It is pertinent to note that the affidavit is not the only source for the court to record the findings regarding prima facie case, balance of convenience and irreparable loss. The affidavits which are filed on record have to be read in consonance with the pleadings of plaintiff, pleading of defendants, documents of sale, certification of mutation and other material which is produced on record, reference *Shamrao Ganpat Chintamani vs Kakasaheb Gorde 2008 (2) M.L.R.J.819* in the case in hand, the affidavits of the witnesses is not in consonance with the documents on record. Accordingly, can not be accepted to support ones possession.

12. The cumulative discussion above and the document of the title in favour of the plaintiff reflects that, he is enjoying the property from the date of sale transaction. The plaintiff have made out prima-facie case by way of cogent evidence. On the other hand, the defendants have no probable case as pleaded by them. In such circumstances, I have no hesitation to record the finding to the point No.1 in the affirmative.

**As to point no. 2 and 4 :**

13. The recitals of the documents in favour of the plaintiff shows the exchange of the valuable consideration. In such circumstances, if his possession is not protected certainly, he will suffer irreparable loss. Conversely, the defendants have not made out such case of loss. Accordingly, I am of the view the balance of convenience is in favour of the plaintiff. So, the point no. 2 and 3 are recorded in the affirmative. Accordingly, the plaintiff is entitled for the equitable relief of injunction. So, to answer the point No. 4 I am inclined to pass the following order to meet the ends of justice.

**O R D E R**

- 1) Application is allowed.
- 2) Defendants, their servants and agents are restrained from obstructing the possession of the plaintiff to suit property bearing B.No. 157/1/A adm. 81 R. situated at village Virvade, Tal. Mohol.
- 3) Costs in cause.

Dt. 05-05-2022.

Sd/-  
( G. B. Nandagavale )  
Jt.Civil Judge Jr. Division,  
Mohol

**CERTIFICATE**

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

Name of Stenographer : S. K. Torane,  
Name of the Court : Jt. Civil Judge J.D., Mohol  
Date order/Judgment : 05-05-2022.  
Judgment /order signed by P.O. on : 05-05-2022  
Judgment / order uploaded on : 06-05-2022