

MHST060005082018

R.C.S. NO. 97/2018



ASHOK P. UGALMOGALE

Vs.

DHANAJI G. VIRKAR AND ORS

ORDER BELOW EXH. 05

This is application for temporary injunction restraining defendant No. 1 from disturbing plaintiff's possession and not to construct over the suit property.

02. The plaintiff's case is that property situated at village Sokasan, Tal. Man, Dist. Satara bearing Gat No. 686 ad-measuring 61R and road towards eastern-side of north-south Ranand to Sokasan road (more specially described in plaint para No. 1 & hereinafter referred as suit property) is subject matter of suit. In above suit property east-west 1/2 portion was purchased by the plaintiff on 02.01.2017 by way of registered sale-deed of Rs. 75,000/-. Said property was originally owned by Putalabai Jayant Jadhav and it was purchased by Atmaram Salunkhe and Gopinath Pawar vide sale-deed dated 25.01.1985. After the sale-deed, there was oral partition amongst above named co-owner and the suit property was received to the plaintiff. Towards eastern side of suit property there is road and valuation of property in-front of road was also good. Therefore, the partition was effected accordingly.

03. Atmaram Mahadeo Salunkhe had sold his east-south corner's first portion to Natha Shripati Galande vide sale-deed dated 03.11.1992 and he is having house No. 609 in the same. In said house defendant No. 4 and 14 are residing. Thereafter, defendant No. 4 Natha has sold his property in favour of Bhagwan Govind Virkar and Dada Anna Galande. They have constructed their respective house in said property and defendant No. 8 to 13 are residing over there. Share of defendant No. 2 in the suit property was owned by Dada Galande and later on he sold the same in favour of defendant No. 1. However, in the sale-deed of defendant No. 1 the boundaries are mentioned wrongly. Western portion of property of defendant No. 1 out of suit property was sold in favour of defendant No. 6 Mohan Dada Mane and he is residing in property No. 458 and 62. Out of property of defendant No. 6 western part of suit property was sold by Atmaram Salunkhe in favour of defendant No. 3 wherein there are property No. 731, 646 and 766 of defendant No. 3 and he possessing the same. Later on towards southern side some portion is remained which is owned and possessed by Atmaram. Considering above situation Atmaram Salunkhe has alienated his half share in originally purchased property by way of various sale-deeds and vendee's are possessing their respective portion from east to west.

04. However, share of Gopinath Balku Pawar toward northern side was situated. It was succeeded to his heirs. The legal heirs have sold said portion in favour of plaintiff on 02.01.2017 and accordingly, the plaintiff is having ownership and settled possession in the property/ share of Gopinath Pawar. Due to various portions in the property the boundaries are not properly mentioned in the sale-deeds executed by Atmaram Salunkhe. However, Atmaram Salunkhe was having no share towards northern side which is owned by the plaintiff.

05. In these factual situation, defendant No. 1 was misused the fact of wrong boundaries in the other sale-deed and he has illegally obstructed the road front portion of the plaintiff's property and obstructed the plaintiff from entering into his remaining property from the road side/ eastern side. He threatened that he will construct on the said portion and actually he has started collection of material for construction. Due to his apprehension to the plaintiff's peaceful possession, the plaintiff prayed for interim protection as stated Supra.

06. The plaintiff has specially submitted that he has no prayer to seek in respect of defendant No. 2 to 14.

07. Defendant No. 1 has filed reply at Exh. 24 and denied all adverse allegations in the plaint. The defendant contended that the

plaintiff has intentionally suppressed material facts. He denied ownership of the plaintiff on the basis of sale-deed dated 02.01.2017. He denied the allegation of oral partition as alleged in the plaint. Even, he denied the sale-deeds in chronology stated by the plaintiff from east to west. He specially contended that Atmaram Salunkhe was having possession eastern side 1/2 share and out of the same defendant No. 4 Natha had purchased 5R portion vide sale-deed dated 03.11.1992. Thereafter, on 18.09.1995 sale-deed stated by plaintiff was executed and mutation No. 698 was recorded. Thereafter, Dada Galande has even 4R portion on 12.12.2003 in favour of defendant No. 1 by mentioning boundaries and mutation No. 1041 to that effect was also effected. In said property, defendant No. 1 is having exclusive possession and he has tin shade over the same.

08. After defendant No. 1 and 4 there is property of defendant No. 2 towards western side in the south-north portion and he constructed the house in it. Thereafter, toward south defendant No. 6 has purchased a portion on 20.06.1997. Thereafter, toward south there is portion of defendant No. 3 and toward south some portion of Atmaram Salunkhe is remained. Toward west side 1/2 share out of the property 1/4 share was sold in favour of Shankar Balku Pawar. Considering said situation the suit of plaintiff is based on imaginary

story. Thus, with detail reply he prayed to reject the application.

09. Heard both the side. They argued in consonance of their respective applications and say. Now, it is necessary to verify whether *prima-facie* case, balance of convenience and irreparable loss are made out in favour of the plaintiff.

10. At the outset, the plaintiff has pointed out plaint map which is part and parcel of the plaint and said map is required to be taken into consideration for to understand the story of parties.

11. On considering rival pleadings and sale-deeds on record, it is clear that towards western side of southern portion /share there is property of Atmaram Salunkhe. Execution of various sale-deeds are undisputed in the matter. Ordinarily, one co-sharer can not take the share of back side when it is possible to take equal road front portion to both the co-sharer.

12. The story of defendant No. 1 states that he has purchased his property (disputed portion) from Dada Galande. However, there is no document which can suggest that Dada Galande was having ownership of plaintiff's property. Even, in absence of any consent from Gopinath i.e., predecessor in title of plaintiff, he is not legally entitled

to alienate plaintiff's share to defendant No. 1. Therefore, the plaintiff is having *prima-facie* case.

13. On considering story of defendant, he firstly denied the theory of plaintiff of oral partition. At the same time, he pointed out various sale-deeds executed by Atmaram Salunkhe. Had there was no partition then, Atmaram was having no competence to execute the sale-deed as required under section 7 of Transfer of Property Act. Admittedly, the defendant are having their respective house in the southern share and they are possessing the said respective portion as per respective sale-deed dated 03.11.1992, 18.09.1995, 12.12.2003 and so on. Lastly, as stated above there is portion of defendant No. 7 Atmaram who was having 1/2 share in the original suit property. Therefore, *prima-facie* there is substance in the story of plaintiff.

14. Learned advocate for defendant has specially argued that the plaintiff is having sale-deed in the year 2017 but the defendant No. 1 is having sale-deed of the year 2003. Therefore, earlier sale-deed will be prevail. Therefore, the injunction can not be issued against defendant No. 1.

15. Here, I have carefully considered said point of argument. However, the defendant is blowing hot and cold at the same time. At

one hand defendant No. 1 submitting there was no partition and on the other hand he is taking benefit of the sale-deed of which shares are not allegedly defined. Therefore, considering said position, it *prima-facie* infers that there was oral partition and on the basis of same the co-sharer had alienated his share. Consequently, though portion of sale-deed in favour of defendant No. 1 is of the year 2003 but it was executed without ownership and competency in favour of vendor. Therefore, *prima-facie* said sale-deed towards road side in favour of defendant No. 1 is having no probative value at this stage.

16. Admittedly, the plaintiff has purchased his northern 1/2 share from legal heirs of Gopinath Pawar. Therefore, the plaintiff is entitled for protection to his ownership and possession.

17. Learned advocate Shri. P.D. Karande for defendant submitted that though Atmaram has supported the plaintiff but he has lost his interest in the property. Therefore, his support will be having no value in favour of the plaintiff. There is substance in the argument. However, it can not be ignored that Atmaram is having portion of property towards end of his share. Therefore, this fact is very material to determine the *prima-facie* case and balance of convenience in favour of the plaintiff. Had the portion towards eastern side was given in the

share of Atmaram as contended by the defendant, then, it was impossible to keep remaining portion towards west side of Atmaram. Therefore, this fact is helpful to the plaintiff to determine the *prima-facie* case and balance of convenience in his favour.

18. Now, the plaintiff is in possession of his 1/2 share of the suit property legally and therefore, if the defendant obstruct his possession and approach road then, the plaintiff will suffer irreparable loss. He will be unable to utilize his property to full extent. Therefore, point of irreparable loss is also in favour of the plaintiff.

19. It is pertinent to note that all the observations while deciding the application are on the basis of *prima-facie* case. Merits of the matter may result in otherwise. However, at this stage, the plaintiff is entitled for interim protection. Here, it is also clarified that the sale-deeds mentioned above the parties are not in dispute. Therefore, in the discussion there is no emphasis on the dates and portion of the purchaser who are defendant No. 2 to 14. Even, there is no prayer against them. Considering entire circumstances of the case, the plaintiff has successfully made out all the points of *prima-facie* case, balance of convenience and irreparable loss in his favour. Therefore, he is entitled for temporary injunction. Hence, following order :-

-: O R D E R :-

1. Defendant No. 1 is hereby temporarily restrained from obstructing the plaintiff's possession and approach road over the plaintiff's 1/2 share of the suit property till final decision of the matter.
2. Costs in cause.

Date:- 03.08.2023

Place:- Dahiwadi.

(G.D. Patil)
Civil Judge Jr. Division,
Dahiwadi.

-: Affirmation certificate :-

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

Name of the Stenographer :- A. N. Ombase, Steno Grade-3,

Name of the Court :- Civil Judge (J.D.) & J.M.F.C.,
Dahiwadi, Tal. Man, Dist.
Satara.

Date of judgment/order :- 03/08/2023.

Judgment/order signed by the
Presiding Officer on :- 03/08/2023.

Date of judgment/order uploaded on :- 04/08/2023.