

MHST060013912024

R.C.S. NO. 520/2024



RAJARAM M.WAGHMODE AND ORS

Vs.

MAHADEV ANNA KHATAL AND ANR

ORDER BELOW EXH. 05

The present application is moved by plaintiffs under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 for restraining defendants from disturbing their peaceful possession over the property i.e. described in para no.1 of the plaint (hereinafter referred as “the suit property”).

The case of the plaintiffs in short is as under :-

02. The plaintiffs have filed suit for perpetual injunction. It is the contention of plaintiffs that the father of plaintiff No. 1 to 3, husband of plaintiff No. 4, grand father of plaintiff No. 5 and father-in-law of defendant No. 6 i.e. Mukinda Waghmode had purchased the half share of the suit property from defendant No. 1. Since then, Mukinda Waghmode was in possession of the suit property. Mukinda Waghmode and defendant No.1 were having joint possession of the suit property. Defendant no.1 has partitioned the property between him and his sons. Thereafter, for construction of well in suit property plaintiffs and defendants divided the Gat no. 1905 into 1905/1 and 1905/2. After the death of Mukinda Waghmode, plaintiffs are in possession of the suit property. Plaintiffs and defendants are having joint possession of the suit property. The suit property is not partitioned yet. The plaintiffs have filed suit for partition of the same suit property i.e. R.C.S. No. 290/2022 in this Court. That suit is pending. On 11.12.2024 defendant No. 1 and 2 have disturbed the possession of plaintiffs over the Grampanchayat Property No. 518 situated in Gat No. 1905/1. They threatened plaintiffs

to thrown out of the house. Plaintiff No. 1 has filed police complaint. Therefore, plaintiffs have filed present application.

03. Defendant no.1 and 2 have filed reply at Exh.41. They contended that plaintiffs are purchasers of the suit property. They have already filed suit i.e. R.C.S. No. 290/2022 for partition of same suit property. In that suit, they had filed application for temporary injunction. On 01.02.2024 that application has been rejected by this Court. The plaintiffs have filed same kind of application in present suit. They have not challenged previous order of rejection. They have filed false complaint in the police station. Plaintiffs are in possession of half share of the suit property towards western-side and defendants are in possession of suit property towards eastern-side. Defendant No. 1 and 2 are having separate possession over the suit property. They are having house, cow shade etc in the suit property towards eastern-side. They have developed their house. They are cultivating the suit property by taking various types of crops. They have done lot of expenses for the development of suit property. They have also constructed the well in the suit property. They have made facilities of irrigation. Plaintiffs have also constructed two houses and cow shade in the suit property. They are also taking crops. Defendants never disturbed the possession of the plaintiffs over the suit property. On the contrary, plaintiffs are disturbing possession of defendants over the suit property. The plaintiffs are trying to harass the defendants. By taking disadvantage of ex-parte interim injunction order, the plaintiffs are trying to take forcible possession of suit property which is in possession of defendants. There is no prima-facie case in favour of plaintiffs. The partition of the suit property is not taken place yet. Therefore, they prayed for rejection of the application.

04. I have heard the learned counsel for plaintiffs and the defendants.

05. Plaintiffs and defendants have filed some documents on record in support to their contentions. It will be discussed at relevant stage.

06. It is the contention of plaintiffs that the defendants are disturbing their peaceful possession over the suit property. On the other hand, defendants contended that plaintiffs have filed the present application without having sufficient reason.

07. It is admitted position that defendant no.1 has sold the suit property to Mukinda Waghmode. The plaintiffs and defendants are in joint possession of the suit property. The suit property is not partitioned yet. In R.C.S. No. 290/2022, plaintiffs have filed same kind of application for the same property. That application has been rejected on the ground that there is no overt act on behalf of defendants and other grounds.

08. Learned advocate for defendants stated that the co-owner can not claim injunction. To support his contention he relied the judgment of Hon'ble Supreme Court in case of **Tanusree Basu and ors Vs. Ishani Prasad Basu and ors**, AIR 2008 Supreme Court 1909. He also relied on the judgment of Hon'ble Bombay High Court in case of **M/s. Amoda Properties LLP Vs. Mr. Joy Mrinalkani Basu and ors** 2022 SCC Online Bom 399. He further relied on the judgment of Hon'ble Bombay High Court in case of **Prakash S. Akotkar and ors Vs. Mansoorkha Gulabkha and ors** AIR 1996 Bom 36.

09. On the contrary, learned advocate plaintiff submitted that one co-owner can not take exclusive possession of the property nor commit an act of waste, ouster or illegitimate use and he does so he may be restrained by an injunction. To support his contention, he relied on the judgment of Hon'ble Supreme Court in case of **T. Laxmipathi and ors Vs. P. Nithyananda Reddy and ors (2003) AIR (SC) 2427**. He also relied in on the judgment of Hon'ble Bombay High Court in case of **Baban Anantrao Naik Vs. Sau. Pramila Uttamrao Yenare and anr 2011 (6) ALL MR 15**.

10. By perusal of on documents on record. It prima-facie appears that plaintiffs and defendants are in joint possession of the suit property. They are cultivating their own shares in the suit property. They are co-owners in the suit property. As per judgment of Hon'ble Supreme Court in case of **Tanusree Basu** (discussed Supra), the co-owner can not claim injunction against the another co-owner. They both are having equal right of enjoyment in suit property. The partition of suit property is not taken place yet. Moreover, same kind of application has been decided by this Court in R.C.S. No. 290/2022 which relates to the same suit property. With due respect, it is necessary to state that the facts of other judgments cited by plaintiffs and defendants are having different facts than the case in hand. The plaintiffs failed to show prima-facie case. Hence, I pass following order.

∴ ORDER ∴

Application is rejected.

sd/-

Date:- 28.02.2025

Place:- Dahiwadi.

(S. S. Gadve)

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	:- 28.02.2025
Judgment/order signed by the Presiding Officer on	:- 28.02.2025
Date of judgment/order uploaded on	:- 28.02.2025