

R.C.S. No.290/2022

MHST060009782022

ORDER BELOW EXH.17

The present application is moved by plaintiffs under Order 39 Rule 1 and 2 of the Code of Civil Procedure 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”).

2. The case of plaintiffs in short is as under:-

Plaintiffs have filed suit for partition and separate possession. It is the contention of plaintiffs that the father of plaintiff no.1 to 3 has purchased the suit property from defendant no.1. Since then he was in possession of the suit property. The father of plaintiff no.1 to 3 and defendant no.1 were having joint possession of the suit property. The defendant no.1 has partitioned the property between his sons i.e. defendant no.2 and 3. The defendant no.1 has sold some property to defendant no.4. Plaintiffs and defendants divided the Gat no. 1905 into 1905/1 and 1905/2. After the death of father of the plaintiff no.1 to 3, plaintiffs are in possession of the suit property. Plaintiffs and defendants are having joint possession of the suit property and the suit property is not partitioned yet. On 16.10.2023 the defendant no.1 to 3 have obstructed the possession of plaintiffs over the suit property. Therefore, plaintiffs have filed present application.

3. Defendant no.1 to 3 have filed reply at Exh.20. They contended that the present application is false. There is no cause of action to file the present application. The suit property was originally owned by defendant no.1. Out of that suit property, the defendant no.1 has sold some portion of the suit property to the father of plaintiff no.1 to 3. Both parties are cultivating their respective properties. Defendant no.1 to 3 have developed their property by investing huge amount. They prepared the suit property for cultivation by investing huge amount. They also erected the well in the suit property. Plaintiffs have filed the present application without any sufficient reasons. Therefore, they prayed for rejection of the application.

4. I have heard the learned counsel for plaintiffs and the defendant no.1 to 3.

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

6. It is the contention of plaintiffs that the defendant no.1 to 3 are disturbing their peaceful possession over the suit property. On the other hand, defendant no.1 to 3 contended that plaintiffs have filed the present application without having sufficient reason.

7. It is admitted position that the defendant no.1 has sold the suit property to the father of plaintiff no.1 to 3. The present application

is filed after almost one year of filing of the suit. By way of this application plaintiffs are only praying for temporary injunction against defendant no.1 to 3 for restraining them from disturbing the peaceful possession of plaintiffs over the suit property. It is necessary to see that whether defendant no.1 to 3 are disturbing the peaceful possession of plaintiffs over the suit property. For that purpose plaintiffs have not filed any documents on record to show that defendants are obstructing their possession over the suit property. Moreover, in the present suit plaintiffs are only praying for partition and separate possession. They have not prayed for any type of injunction in the suit. The Hon'ble Apex Court and Hon'ble High Courts in Catena of Judgments held that in absence of main relief of injunction, the temporary injunction cannot be granted. In the present case also plaintiffs cannot pray for temporary injunction in absence of main relief of injunction in the suit. Hence, I pass following order-

ORDER

Application is rejected.

Dahiwadi.
Date: 01.02.2024

(S. S. Gadve)
Civil Judge Junior Division,
Dahiwadi.