

MHST07001152-2011	Order below Exh.5 in RCS No.167/2011 Vasant Vs. Yeshwant
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1. The plaintiff has filed an application under Order XXXIX rule 1(c) of Code of Civil Procedure to restrain defendant no.6A and 6B from carrying out construction upon suit property.

2. It is case of plaintiff that, plaintiff has filed suit for declaration and recovery of possession of encroached portion. Suit property is in the possession of plaintiff and defendants have no concern with the suit property. However, defendants got executed false and fabricated documents in respect of suit property and got their names recorded in the revenue record in respect of suit property. Defendants are trying to take disadvantage of revenue entries and thereby trying to construct upon suit property. Defendants had dug out pits in the suit property on 18/6/2019 and at that time plaintiff requested them to not to construct. But, defendants have denied request of plaintiff. Therefore, plaintiff is constrained to file present application.

3. On the other hand, defendants have filed their say below Exh.82. Defendants have denied all allegations of the plaintiff. It is specific case of the defendants that suit property is in residential zone and it is not agricultural land.

4. It is further case of defendants that father of plaintiff namely Vasant Thorawade had sold out suit property to Arun Sopan Jadhav in the year 1975 by registered sale deed.

5. It is further case of defendants that thereafter father of defendant namely Shivaji and other person namely Vilas had purchased 10 R each by registered sale deed executed by Arun Sopan Jadhav in the year 1990 and since then defendants are in possession of their purchased portion.

6. It is further case of defendants that father of defendants namely Shivaji and Bapu had purchased 3 R and 2 R respectively from father of plaintiff in the year 1974 by registered sale deed and since then defendants are in possession of their purchased portion.

7. It is further case of defendants that defendants are carrying out construction with necessary permission in their land. The suit is not maintainable in the eyes of law as it is barred by limitation. Plaintiff has no prima facie case. Therefore, under these circumstances, application may be rejected.

8. Heard learned Advocate of the plaintiff and defendants. I have gone through documents available on record.

9. The following points arise for determination of this application and I have recorded my findings thereon along with reasons -

Sr. No.	Points	Findings
1.	In whose favour prima-facie case has been made out ?	Defendants
2.	In whose favour balance of convenience lies ?	Defendants

3.	Who will suffer irreparable loss if injunction is granted ?	Defendants
4.	What order ?	Application below Exh.79 is rejected.

REASONS

As to point Nos.1 to 3 :

10. Considering nature of the contentions, all points are required to be considered together.

11. It is settled law that while passing an interim order of injunction under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908, the Court is required to consider three basis principles, namely (a) Prima facie case, (a) balance of convenience and inconvenience and (c) irreparable loss and injury. In addition to the above mentioned three basis principles, a Court, while granting injunction must also take into consideration the conduct of the parties. It is also established law that, the Court should not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequences depending upon the nature thereof and in dealing with such matters, the Court must make all endeavors to protect the interest of the parties.

12. With the above principles, let us consider the claim of both parties.

13. The contention of the plaintiff is that defendants are illegally constructing upon suit property on the basis of fabricated documents particularly sale deed and revenue entries. Whereas it is defence of

defendants that they are owner and possessor of purchased portion out of suit property on the basis of registered sale deeds.

14. While considering contention of both sides and upon perusal of documents particularly sale deeds, it is appeared that father of plaintiff had sold out 20 R land out of Gat No.298 to the Arun Sopan Jadhav in the year 1975 by registered sale deed. Thereafter, it is appeared that Arun Sopan Jadhav had further alienated his portion to Shivaji (father of defendants) and Vilas by registered sale deed executed in the year 1990 and by that sale deed father of defendant and Vilas had become owner to the extent of 10 R each. It is further appeared that father of plaintiff had also sold out 5 R land to the father of defendant namely Shivaji and other person namely Bapu in the year 1974 by registered sale deed.

15. All above sale deeds show that defendants had purchased portions out of suit property since long back. This itself shows that defendants have strong prima facie case in their favour at this stage.

16. Plaintiff has not given any explanation in his plaint or application filed below Exh.79 as to why there was a delay in bringing legal action against defendants in respect of sale deeds. The conduct of plaintiff itself denies plaintiff seeking any equitable relief as plaintiff had slept over his right.

17. The contentions raised by plaintiff in respect of fabricated sale deeds is the question of trial and this contention cannot be decided without evidence at this stage. Therefore, in my opinion, balance of convenience also lies in favour of defendants.

18. There is nothing on record which could support case of plaintiff at this stage. Therefore, under these circumstances, I am inclined to hold that defendants are in possession of purchased portion out of suit property and if injunction is granted, defendants would suffer irreparable loss or injury at this stage and which cannot be compensated later on. Therefore, interest of defendants is required to be protected at this stage. Hence, I answer all the points in favour of defendants.

As to Point No.4 :

19. While considering the above discussion, application below Exh.79 is required to be rejected. Hence, following order.

O R D E R

- 1} Application below Exh.79 is hereby rejected.
- 2} Cost in main cause.

Date :- 21st September, 2019

(S.M. Sarode)
4th Civil Judge, Junior Division,
Karad