

IN THE COURT OF Jt. CIVIL JUDGE, JUNIOR DIVISION, KARAD

Regular Darkhast No. 129/2012

Shri. Dada Ganpati Waghmare-1

Versus

Shri. Suryakant Mahadeo Dange-10

ORDER BELOW APPLICATION EXH. 171

(Passed on this **20th** day of **February, 2015**)

By this application, third parties namely Sou. Shubhada Suhasrao Dol and Shri. Tejas Suhasrao Dol have prayed for temporary injunction restraining decree holders from alienating any area in the land bearing Gat No. 1114.

2. Their case, in brief, is that they have filed objections vide Exh. 23 to the execution of decree passed in Spl. C. S. No. 111/2000 and enquiry in that regard is pending. On 19.10.1996 Mr. Shailesh Suhasrao Dol, elder son of third party No. 1 purchased area of 5.82-R and third party No. 2 purchased 5.60-R out of the land bearing Gat No. 1114 more particularly described in para-2 of the application (hereinafter referred to as “disputed properties”, for short). Since then they are in possession of the said properties. However, on 28.04.2006 decree holders while executing the decree in Spl. C. S. No. 111/2000 got executed sale deed of the suit property in that suit through Court and got entered their names in the revenue record. However, the decree holders illegally got prepared possession receipt with the help of bailiff and on paper obtained possession of

the disputed properties in stead of the suit property in that suit. The boundaries of the suit property as shown in the decree do not tally with the boundaries on the actual site. The suit property has not actually been identified. Therefore, the third parties have filed objections vide Exh. 23 whereupon enquiry started and evidence has been adduced in that regard. In that inquiry court commissioner was also appointed who submitted his report at Exh. 157 along with map. However, the decree holders on 30.01.2014 executed agreement of sale in favour of Shri. Firoz Patel and Salim Shaikh in respect of disputed properties which is illegal. If the decree holders succeed in executing the sale deed, there will be complications and the third parties will suffer irreparable loss. Hence, the application.

3. The decree holders contested the application by filing say at Exh. 176. They denied all the material assertions made in the application. Their case, in brief, is that the third parties are not parties to the execution proceeding, but they have filed an application under Order XXI Rule 97 of the Code of Civil Procedure. Third parties have given wrong boundaries of the disputed properties and they have not received possession of the same. One Mr. Haidarali Patel was in possession towards southern side of the suit property. The original owner of the suit property had alienated several portions and therefore co-sharers have been changed from time to time. The original owner had executed agreement of sale in the year 1991 in favour of decree holders in respect of the suit

property. The third parties got executed sale deed in the year 1996. The decision in the suit has been confirmed up to the Hon'ble High Court. The third parties are having no concern with the suit property. Balance of convenience does not lie in favour of third parties. The decree holders have handed over possession of the suit property on the strength of agreement of sale. Therefore, application may be rejected.

4. The points for determination along with my findings thereon are as under;

Sr.No	Points	Findings
1]	Whether third parties have made out a prima-facie case in their favour ?	Yes.
2]	Whether the balance of convenience lies in favour of third parties ?	Yes.
3]	Whether third parties would suffer irreparable loss , if the injunction is not granted ?	Yes.
4]	What order ?	The application is allowed as per final order.

5. Learned counsel Shri. R. N. Kulkarni for third parties has vehemently submitted that third parties are independent purchasers who got executed sale deed in the year 1996. The decree holders got prepared possession receipt with the help of bailiff and got executed sale deed in respect of disputed properties belonging to third parties. The boundaries of the suit property do not match with the boundaries on the actual site and therefore it cannot be identified. The exact location of the suit property is in dispute. Third

parties are still in possession of disputed properties. Deputy Superintendent of Land Records came to be appointed by the Hon'ble High Court as Court commissioner who submitted his report along with map. The suit property is belonging to third parties. Para-337 of the Civil Manual applies to the independent applications, however third parties have filed objections in the execution proceeding itself which form part of the proceeding. The decree holders have not taken objections at earlier stage regarding maintainability of objections filed at Exh. 23. The application is maintainable as proceeding on objections filed by the third parties is deemed to be suit. The third parties have been directed to adduce evidence in support of their objections and accordingly they have led evidence, but the decree holders have executed agreement of sale during pendency of objections filed by third parties. He lastly prayed that application may be allowed.

6. Per contra, learned counsel Shri. P. M. Bahulekar for the decree holders has strenuously submitted that the main application Exh. 23 filed by third parties is not about objections. They were simply allowed to file objections, but no any objections were filed by third parties. As per para 337 there should be independent application. No separate petition of objections is filed by third parties. Therefore, the main application itself is not tenable and consequently the present application for temporary injunction is also not tenable. The decree holders have received possession of suit

property through Court. The boundaries of suit property are different from the boundaries as stated in the application. The third parties got executed sale deed during pendency of the suit and therefore, they are bound by the decree which is confirmed up to the Hon'ble High Court. Previously one Mr. Patel was in possession towards southern side of the suit property therefore, the suit property is rightly identified. The third parties have failed to make out a prima-facie case. Balance of convenience does not lie in favour of third parties. Therefore, application may be rejected. The decree holders have also submitted written argument at Exh. 193.

R E A S O N S

AS TO POINT NOS. 1 TO 3 :

7. I have given due consideration to the argument submitted by the learned counsel for the respective parties. At the outset, I would like to mention that though third parties have prayed in the application Exh. 23 for permission to file objections, it is material to note that in the said application itself third parties have raised objections in detail. Furthermore, the Court had initially called say of decree holders to the said application and thereafter passed an order that *"The application falls u/o. 21 R. 99 of CPC. It requires adjudication. Parties to lead evidence, if any."* Thus, it becomes prima-facie clear that the objections filed by third parties have been treated to be under Order XXI Rule 99 of the Code of Civil Procedure. Accordingly, third parties have led evidence. The decree holders

have not raised any such type of objections regarding maintainability of application Exh. 23 ever before till the argument submitted. Therefore, at this stage I do not find force in the argument of learned counsel for decree holders that provisions of para 337 of Civil Manual are not followed. Apart from this, the question of maintainability of application Exh. 23 is to be decided at the final hearing however, as per the order on application Exh. 23 third parties have adduced evidence in support of their objections and the said matter is at fag end. Therefore, at this stage the question about maintainability of main application cannot be decided in the present application.

8. So far as maintainability of present application for temporary injunction is concerned, I would like to refer relevant provision of Section 141 of the Code of Civil Procedure which runs as under,-

“S. 141. Miscellaneous proceedings.-The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction”

Thus, provisions of Order XXXIX Rule 1 of the Code of Civil Procedure which apply to the suits can be made applicable to the proceeding under Order XXI Rule 99 of the Code of Civil Procedure. In this view of the matter the present application is maintainable.

9. Though it is undisputed fact that third parties have got executed sale deed of disputed properties during pendency of the suit, it is yet to be decided as to whether the suit property and disputed properties are the same or not. Therefore, in my view, the question of lis pendense will have to be decided at the time of final hearing.

10. Now, coming to the factual aspect, it is not disputed that decree in Spl. C. S. No. 111/2000 came to be confirmed up to the Hon'ble High Court. However, the main objection of third parties is about wrong execution of the said decree as the decree holders got prepared possession receipt of the disputed properties and not in respect of the suit property as described in the decree. They have challenged boundaries and location of the suit property on the actual site. The Commission report Exh. 157 filed along with measurement map prima-facie shows that the decree holders and third parties are claiming their right over the same property. The decree holders are shown in possession of the property which prima-facie does not tally the boundary towards southern side as mentioned in the decree. The said map prima-facie shows property of Mr. Raghunath Jadhav towards southern side of the suit property. However, in the decree property of Mr. Patel is shown towards southern side of the suit property. The decree holders have stressed upon the affidavit Exh. 183 of Mr. Haidar Patel who has stated that he was in possession of the property till the year 1993, but in the

year 1994 he handed over it to Mr. Dange who sold out the same to Mr. Raghunath Jadhav. However, at this stage it cannot safely be relied upon as the sale deed Exh. 104 of Mr. Raghunath Jadhav prima facie shows that he purchased property from Mr. Surykant Dange by sale deed dated 21.09.1995 in which property of Mr. Suryakant and Chandrakant Dange has been shown towards northern side and property of Mr. Dilip Balkrishna Doshi has been shown towards southern side. The commission map also shows property of Mr. Dilip Balkrishna Doshi towards southern side of the property of Mr. Raghunath Jadhav. The said map shows property of Mr. Raghunath Jadhav towards southern side of the property the possession of which was obtained by the decree holders. However, the sale deed of third party No. 2 dated 19.10.1996 filed along with list Exh. 27 prima facie shows property of Mr. Raghunath Jadhav towards southern side. These facts prima facie support case of the third parties.

11. The sale deed in favour of the decree holders came to be executed through Court on 28.04.2006 and possession was handed over to them on 02.11.2007. Thus, at both that time obviously Mr. Patel was not in possession of the property towards southern side of the suit property. Then the question naturally arises as to why in the sale deed and possession receipt Mr. Patel instead of Mr. Raghunath Jadhav was shown towards southern side of the suit property. This is not explained by the decree holders which prima facie goes against

them. Though decree holders have obtained possession of the suit property through Court as per sale deed in execution of decree, it is material to note that the boundary towards southern side of the suit property which is shown in the commission map does not tally with the boundary mentioned in the decree and possession receipt. The third parties have disputed seriously location and boundaries of the suit property on the actual site which requires adjudication on entire evidence therefore, at this stage I do not find force in the contention of learned counsel for decree holders.

12. Admittedly, the agreement filed along with list Exh. 168 prima-facie shows that decree holder No. 2 has executed agreement of sale on 30.01.2014 in which he described boundaries as per the commission map for which he has not given any explanation in the said agreement. In fact the said boundaries are not as per the boundaries mentioned in the decree or possession receipt. In these circumstances, apprehension in the mind of third parties that decree holders are trying to alienate the disputed properties cannot be said to be fanciful. Prima facie serious dispute is involved about the location and boundary towards southern side of the suit property which requires to be decided upon entire evidence. Therefore, till then the property in dispute needs to be preserved as it is in the interest of justice. The matter will be finalized soon as the evidence of present third parties is over vide pursis Exh. 98. However, if the decree holders succeed in executing the sale deed on the strength

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of agreement of sale dated 30.01.2014, the object of objections filed by third parties will be defeated. One of the object of Order XXXIX Rule 1 of the Code of Civil Procedure is to preserve the property in dispute from alienation. In these circumstances, if the temporary injunction is not granted, the third parties will suffer irreparable loss. The third parties have made out a prima-facie case in their favour. Balance of convenience also lies in their favour. Hence, I answer point Nos. 1 to 3 in the affirmative.

AS TO POINT NO. 4 :-

13. Though the third parties have prayed for temporary injunction restraining alienation of any area in the land bearing Gat No. 1114, it is pertinent to note that in the application there is specific pleading about disputed properties only. Therefore, it would be proper to grant temporary injunction in respect of disputed properties only. The cumulative effect of the findings given above is that the application deserves to be allowed in terms of final order. Considering the peculiar facts and circumstances of the case, I leave the parties to bear their own costs. Hence, in answer to point No. 4, I pass the following order,-

O R D E R

Application Exh. 171 is hereby allowed as under,-

1. Decree holders or anybody claiming through them are hereby temporarily restrained from alienating the disputed

properties as described in para-2 of the application till final disposal of application Exh. 23.

2. Parties to bear their own costs.

Place : Karad
Date : 20.02.2015

(U. P. Kulkarni)
Jt. Civil Judge, Junior Division,
Karad

(S. M. Bondarde)
Stenographer