

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.166

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

By this application, third party namely Shri. Abhijit Anil Jadhav has prayed for temporary injunction restraining decree holders from alienating the disputed property.

2. His case, in brief, is that the disputed property which is an area ad-measuring 6-R out of the land bearing Gat No. 1114 more particularly described in para-1 of the application has been purchased by the third party on 19.10.1996. Since then he is in possession of the said property. He has filed application of objection praying for perpetual injunction and declaration that possession receipt in respect of the disputed property is sham and illegal. However, on the basis of the said illegal possession receipt the decree holders on 30.01.2014 executed agreement of sale in favour of Shri. Firoz Patel and Salim Shaikh in respect of disputed property which is illegal. The boundaries of the property as shown in the agreement, possession receipt and commission map are different. If the decree holders succeed in executing the sale deed, the third party will suffer irreparable loss. Hence, the application.

3. The decree holders contested the application by filing say at Exh. 169. They denied all the material assertions made in the application. Their case, in brief, is that the third party has given wrong boundaries of the disputed property. The decree holders are having possession over the suit property on the basis of possession receipt. 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 party 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 party is having no concern with the suit property. The agreement of sale is not in respect of the disputed property. Balance of convenience does not lie in favour of third party. 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 party has made out a prima-facie case in his favour ?	Yes.
2]	Whether the balance of convenience lies in favour of third party ?	Yes.
3]	Whether third party 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. S. Y. Patil for the third party has vehemently submitted that third party is independent purchaser 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 property belonging to third party. 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 party is still in possession of disputed property. 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 party. Para-337 of the Civil Manual applies to the independent applications, however third party has filed objections in the execution proceeding itself which form part of the proceeding. The third party has made specific prayer in the application Exh. 30 for perpetual injunction and declaration. The decree holders have not taken objections at earlier stage regarding maintainability of objections filed at Exh. 30. The application is maintainable as proceeding on objections filed by the third party is deemed to be suit. The third party has led evidence, but the decree holders have executed agreement of sale during pendency of objections filed by third party. 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. 30 filed by third party is not about objections. As per para 337 there should be independent application. No separate petition of objections is filed by third party. 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 party got executed sale deed during pendency of the suit and therefore, he is 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 party has failed to make out a prima-facie case. Balance of convenience does not lie in favour of third party. 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 third party filed objections at Exh. 30 and specifically prayed for perpetual injunction in respect of disputed property and declaration in respect of possession receipt. The Court had called say of decree holders to that objection application.

Accordingly the decree holders have filed say. Though no further order has been passed below Exh. 30, it is material to note that third party has adduced evidence by way of examination-in-chief at Exh. 103. Thus, he was impliedly allowed to adduce evidence in support of his objections. Thus, his objections have been treated under Order XXI Rule 99 of the Code of Civil Procedure. The decree holders have not raised any such type of objections regarding maintainability of application Exh. 30 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. 30 is to be decided at the final hearing however, third party has filed examination-in-chief in support of his objections and the same is pending for his cross examination. Therefore, at this stage the question about maintainability of the 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 party got executed sale deed of disputed property during pendency of the suit, it is yet to be decided as to whether the suit property and disputed property is the same or not. Therefore, in my view, the question of lis pendence 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 party is about wrong execution of the said decree as the decree holders got prepared possession receipt of the disputed property and not in respect of the suit property as described in the decree. He has 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 party 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-faice 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 another third party namely Mr. Tejas Suhasrao Dol dated 19.10.1996 filed along with list Exh. 27 prima facie shows property of Mr. Raghunath Jadhav towards southern side. The sale deed of present third party filed along with list Exh. 48 prima facie shows that there is property of Mr. Shailesh Suhasrao Dol towards southern side. The sale deed filed along with list Exh. 27 of Mr. Shailesh Suhasrao Dol prima facie shows property of the present third party towards northern side. These facts prima-facie

corroborate case of the third party.

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 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 party has 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 of the property 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 party that decree holders are trying to alienate the disputed property 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 matter is pending for cross examination of the present third party. However, if the decree holders succeed in executing the sale deed on the strength of agreement of sale dated 30.01.2014, the object of objections filed by third party 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 party will suffer irreparable loss. The third party has made out a prima-facie case in his favour. Balance of convenience also lies in his favour. Hence, I answer point Nos. 1 to 3 in the affirmative.

AS TO POINT NO. 4 :-

13. The cumulative effect of the findings given above is that the application deserves to be allowed. 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

1. Application Exh. 166 is hereby allowed.
2. Decree holders or anybody claiming through them are hereby temporarily restrained from alienating the disputed property as described in para-1 of the application till final disposal of application Exh. 30.
3. 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