

Reg. Civil Suit No. 562/2018

(CNR No. MHST07-003003-2020)

Mansing Thorat and ors. Vs.Arjun Patil
and ors.

Order below Exh.5

1. The plaintiff has filed an application under Order XXXIX rule 1(a and c) of Code of Civil Procedure to restrain defendant no.1A, 1B and 2 from selling out suit property bearing block no. 197 an area ad measuring 2 H 83 R, out of it 26 R and from restraining defendant no. 1A, 1B and 2 from obstructing his possession over the suit property as mentioned in para. 1B of the plaint, situated at Village Savade (east), Tal. Karad, Dist. Satara.
2. It is case of plaintiff that, forefathers of the plaintiff namely Mansing purchased an area ad-measuring 26 R from Vishnu Hari Thorat by registered sale deed in the block no. 197.
3. It is further case of the plaintiff that, house bearing no. 442/1, 442/2, 442/3 are belonged to plaintiff.
4. It is further case of the plaintiff that, plaintiff constructed house in 4 R and had given some portion to the defendant no. 34 to 37 for their use.
5. It is further case of the plaintiff that, defendant no. 1A and 1B have given power of attorney to the defendant no. 2.
6. It is further case of the plaintiff that, on the basis of power of attorney defendant no. 2 is trying to obstruct possession of the plaintiff over the suit property 1B and threaten to sell out their portion.

7. It is further case of the plaintiff that, defendant no. 1A and 1B and 2 are not owners in the block no. 197. However, there is hollow revenue entry in the name of defendant no. 1A and 1B and on the basis of that hollow entry, defendant no. 2 is trying to sell out some portion out of the block no. 197. Therefore, under these circumstances, plaintiff is constrained to file present application.

8. On the other hand, defendant no. 1A, 1B and 2 have filed their say below exh. 21 and denied contentions of the plaintiff. It is specific contention of defendants that, relief of declaration of ownership, claimed by the plaintiff is out of limitation. It is further case of defendants that, description of suit property is not correct as sale deed of plaintiff is in respect of common area. It is further case of defendants that, they are owners and possessors in the block no. 197 on the basis of sale deeds executed on 06/08/1984, 01/12/1993, 01/12/1993 and 03/12/1993. It is further case of the defendants, that, defendant are co-owners, therefore, no interim relief can be granted against defendants. Therefore, under these circumstances, present application may be rejected.

9. Heard learned Advocates of the plaintiff and defendant no. 1A, 1B and 2. I have gone through documents available on record.

10. 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 ?	Defendant no.1A, 1B and 2

2.	In whose favour balance of convenience lies ?	Defendant no.1A, 1B and 2
3.	Who will suffer irreparable loss if injunction is granted ?	Defendant no.1A, 1B and 2
4.	What order ?	Exh. 5 is rejected.

R E A S O N S

As to point Nos.1 to 3 :

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

12. 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, (b) 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.

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

14. It is case of the plaintiff that, he is owner and possessor in the

block no. 197 and defendants are not concerned with block no. 197. Whereas it is case of defendants that, they are owners and possessors in the block no. 197 and plaintiff has no reason to file suit against them.

15. On this background and upon perusal of documents filed on record by both sides, it is appeared that, forefathers of the plaintiff namely Mansing purchased portion particularly 26 R in the block no. 197 by registered sale deed. It is further appeared that, father of defendant no. 1A also purchased some portion in the block no. 197. It is further appeared that, defendant no. 1B also purchased some portion in the block no. 197 by two registered sale deeds. It is further appeared that, in view of mutation entry no. 908, defendant no. 2 is also purchaser in the block no. 197. It is further appeared that, defendant no. 1A and 1B executed of power of attorney in respect of their portion in block no. 197, in favour of defendant no. 2 for the purpose of supervision and conducting other legal work on behalf of them.

16. All these documents clearly show that, both parties are purchasers in the block no. 197.

17. It is settled position of law that, in order to claim interim relief, plaintiff is to show that, he is exclusively in possession of suit property. While considering point of possession in respect of plaintiff's case, i am required to note here that, plaintiff's forefathers purchased portion in common. The sale deed of plaintiff does not contain boundaries of the purchased portion. There is no explanation or pleadings in the plaint, how the plaintiff, mentioned boundaries of suit property particularity 1B. Therefore, at this stage, it can not be

concluded that, plaintiff is in possession of suit property 1B particularly within the boundaries, as mentioned in the plaint without evidence. There is no substantive document on record which could show that, boundaries mentioned in the plaint in respect of suit property 1B is correct in respect of possession of plaintiff.

18. It is also pertinent to note here that, plaintiff himself filed suit for partition and separate possession in respect of 26 R out of block no. 197. On this count alone, application is deserved to be rejected.

19. Moreover, it is pertinent to note here that, the whatever boundaries mentioned in the plaint in respect of suit property 1B does not show that, defendant no. 1A, 1B and 2 are adjacent land holders so as to obstruct possession of the plaintiff over the suit property 1B. Therefore, the contentions of the plaintiff is appeared to be not genuine and material one at this stage.

20. It is required to note here that, power of attorney being executed in favour of defendant no. 2 does not show that, defendant no. 2 is authorized to sell out portions belonging to defendant no. 1A and 1B. Thus, it is appeared that, plaintiff has not come with clean hands to the court, so as to seek equitable relief.

21. The case of the plaintiff, is not at all supported by documents particularly in respect of exclusive possession within the boundaries of suit property. The contentions of the plaintiff that, defendant no. 1A, 1B and 2 are not owners is appeared to be malafide one at this stage as defendants have filed all relevant documents regarding their ownership in the block no. 197.

22. Therefore, under these circumstances, I am inclined to hold that, plaintiff has no prima facie case and balance of convenience in his favour at this stage. On the contrary, contentions of the defendants appeared to be genuine and supported by all the material documents. Therefore, in my opinion, defendant no. 1A, 1B and 2 have prima facie case and balance of convenience in their favour at this stage. Therefore, interest of defendant is required to be protected at this stage. Therefore, if injunction is not granted to the plaintiff, he would suffer irreparable loss or injury at this stage. However, if injunction is granted to plaintiff, defendants would suffer irreparable loss or injury at this stage and it can not be compensated later on.

23. The learned advocate of plaintiff has filed various citations of Hon'ble Supreme Court and High Court on record. I have gone through all these citations. However, none of the citation is relevant to the case in hand.

As to Point No.4 :

24. While considering the above discussion, application below Exh.5 is required to be rejected. Hence, following order.

ORDER

1. Application below Exh.5 is hereby rejected.
2. Cost in main cause.

Date :- 23.02.2021

(S.M. Sarode)
3rd Civil Judge, Junior Division,
Karad