

ORDER BELOW EXH. 5 REG. CIVIL SUIT No. 602/2020

(CNR No. MHST07-3767-2020)

Sambhaji Patil and others Vs. Altaf Shikalgar and others

01. The plaintiffs have filed an application under Order XXXIX rule 1(c) of Code of Civil Procedure to restrain defendant no. 1 from obstructing their possession over the suit properties as described in para 1 of the plaint.

02. It is case of plaintiffs that, suit properties were originally owned by Bhagwan Koli.

03. It is further case of the plaintiffs that, survey no. 13/3 was mortgaged by conditional sale by the Bhagwan Koli in favour of Laxman Jadhav on 25/05/1953.

04. It is further case of the plaintiffs that, survey no. 13/1 was also mortgaged by conditional sale by Bhagwan Koli in favour of Laxman Jadhav on 13/07/1955.

05. It is further case of the plaintiffs that, they were relatives of Laxman Jadhav.

06. It is further case of the plaintiffs that, Laxman Jadhav was unable to cultivate suit properties therefore, Laxman Jadhav had given suit properties to the forefather of the plaintiffs namely Yashwant Shidu Patil on the basis of share in the produce of crop i.e 1/3 produce of total production.

07. It is further case of the plaintiffs that, they were tenants in the

suit property since 1956.

08. It is further case of the plaintiffs that, they had registered rent agreement dated 16/12/1986 in their favour.

09. It is further case of the plaintiffs that, they have been in possession of suit property since 1956.

10. It is further case of the plaintiffs that, original owner namely Bhagwan Koli had filed regular civil suit bearing no. 158/1989 for redemption of mortgage against Laxman Jadhav. In that suit, neither forefather of the plaintiffs nor plaintiff were party to the suit.

11. It is further case of the plaintiffs that, Laxman Jadhav had filed regular civil appeal bearing no. 189/1994 in the District court and as per the judgment of appeal, Laxman Jadhav was declared owner of the suit properties.

12. It is further case of the plaintiffs that, the second appeal bearing no. 571/2008 being filed by Bhagwan Koli had been withdrawn as matter was compromised between legal heirs of Bhagwan Koli and Laxman Jadhav.

13. It is further case of the plaintiffs that, they were no parties to the above mentioned legal proceedings. Therefore, the decision of above mentioned legal proceedings are not binding upon them.

14. It is further case of the plaintiffs that, the documents being

executed by Laxman Jadhav in favour of koli is also not binding upon them.

15. It is further case of the plaintiffs that, they have filed regular civil suit bearing no. 269/2010 and 444/2013 against Bhagwna Koli and his legal heirs and all are subjudice.

16. It is further case of the plaintiffs that, on the basis of document of redemption of mortgage, defendant no.1 is creating obstacles in the peaceful possession of plaintiffs over the suit properties. On 03/03/2020 defendants beat to the plaintiffs and damaged crop of plaintiffs. Plaintiffs had also lodged criminal case against defendants. Therefore, under these circumstances, plaintiffs are constrained to file this application.

17. On the other hand, defendant no. 1 has filed his say and written statement below Exh.20, stating that, contents of the application are false.

18. It is case of the defendant no. 1 that, he has no concerned with the suit property and plaintiffs.

19. It is further case of the defendant no.1 that, plaintiff made him unnecessary party to the suit.

20. It is further case of the defendant no. 1 that, he is social worker and had served as a corporator in the municipal council for many years.

21. It is further case of the defendant no. 1 that, he went with his brother for caching fishes in the krushna river on 03/03/2020. At that time, he saw that, there was quarrel going on among some people and he intervened it.

22. It is further case of the defendant no. 1 that, later on, he came to know that, those people lodged false criminal case against him and his brother.

23. It is further case of the defendant no.1 that, plaintiffs are not owner and possessor of the suit properties and they have no concerned with suit properties. Therefore, under these circumstances, present application may be rejected.

24. Heard learned advocates of the plaintiffs and defendant no. 1. I have gone through documents available on record.

25. The following points arise for determination of this application and I have recorded my findings against each of the point thereon, along with reasons :-

Sr. No.	Points	Findings
1.	In whose favour prima-facie case has been made out ?	Plaintiffs
2.	In whose favour balance of convenience lies ?	Plaintiffs
3.	Who will suffer irreparable loss if injunction is not granted ?	Plaintiffs

4.	What order ?	Application (Exh.5) is allowed
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REASONS

AS TO POINT NOS 1 TO 3 :

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

27. 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.

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

29. It is case of the plaintiffs that, they are in possession of suit properties as they are tenants in the suit properties since long. Whereas it is case of the defendant no. 1 that, plaintiffs are not

concerned with the suit properties and they made a false application and suit.

30. While considering above controversial point, it is required to note here that, in order to claim relief of temporary injunction, a party has to show that, he is in possession of the suit property on the date of filing of the suit by substantive documents.

31. At the outset, it is required to note here that, defendant no. 1 has himself admitted that, he is neither concerned with suit properties nor plaintiffs.

32. Now, it is required to see whether plaintiffs are in possession of the suit properties on the date of the filing of the suit at this stage. It is case of the plaintiffs that, their forefathers namely, Yashwant Shidu Patil was tenant in the suit properties since long. While, considering this contention and documents, it is firstly seen that, there was a registered rent agreement for the period of 10 years in respect of suit properties in favour of Yashwant Shidu Patil and he was put in the possession of suit properties. There is also xerox copy of written statement being filed by Laxman Jadhav in R.C.S no. 158/1989. In that, written statement, Laxman Jadhav has stated that, Yashwant Shidu Patil was in possession of the suit properties. Thus, it can be concluded that, Yashwant Shidu Patil was in possession of suit properties on the basis of registered rent agreement.

33. It is further seen that, though registered rent agreement was only for term of 10 years but name of the Yashwant Shidu Patil and after his death, name of his legal heirs was continued till 2016-17.

Thus, it can be seen that, though the term of registered agreement was expired but plaintiffs remained in the possession of suit properties.

34. It is seen that, possession of plaintiffs was never taken back by the original owner of suit properties or Laxman Jadhav.

35. It has come on the record that, name of the plaintiffs are not appearing in the 7x12 extract of suit properties for recent years as all 7x12 extracts has been made online and there is no column of cultivation in the online 7x12 extract as reflected from the letter dated 27/12/2017 issued by circle officer Saidapur. Thus, it can be inferred that, plaintiffs are in possession of suit properties on the date of filing of the suit as their possession was never taken back and they were in possession of suit properties since long as reflected from 7x12 extract of suit properties.

36. It has also come on the record that, though deeds of redemption mortgage were executed in the year 2009 in favour of original owner of the suit properties but even then, name of the plaintiffs has been continued after 2009, in the cultivation column of 7x12 extracts of the suit properties. Thus, it is required to conclude that, plaintiffs are in possession of the suit properties irrespective of the fact that, whether they are tenants or not.

37. It is required to note here that, plaintiffs or their forefathers were never a party to the legal proceedings which had been taken place in respect of suit properties. Thus, the legal out comes, apparently are not binding upon the plaintiffs.

38. It is settled position of law that, in order to decide application of temporary injunction, possession is to be seen and not the ownership. In the instant case, plaintiffs are seen in the possession of the suit properties at this stage as discussed above.

39. Therefore, under these circumstances, I am inclined to hold that, plaintiffs have prima facie case and balance of convenience in their favour at this stage as their case is supported by the documents.

40. Therefore, under these circumstances, if injunction is not granted to the plaintiffs, they will suffer irreparable loss or injury at this stage. However, if injunction is granted to plaintiffs, defendant no. 1 will not suffer irreparable loss or injury at this stage. Therefore, interest of plaintiffs is required to be protected at this stage.

41. I may take recourse to the ratio laid down in the case of, Krishna Ram Mahale [Dead], by His Lrs. Vs. Shobha Venkat Rao, reported in 1989 DGLS [Soft.] 386. In that case, it has been held that, “It is well settled law in this country that where a person is in settled possession of the property even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law.”

42. In the instant case, plaintiffs are in the possession of the suit property as discussed above. It has come on the record that, in view of FIR No. 83/2020, registered before Karad Taluka police station, possession of the plaintiffs over suit properties had been obstructed illegally by the defendant no. 1. The defendant no.1 can not obstruct possession of the plaintiffs over the suit properties without following

due procedure of law regarding their claim of the suit properties. Therefore, defendant no. 1 is required to be temporarily restrained from obstructing possession of the plaintiffs over the suit property till the final disposal of the suit. Hence, I answer all the points in favour of plaintiffs.

AS TO POINT NO. 4 :

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

ORDER

1.	Application below Exh.5 is hereby allowed.
2.	Pending disposal of suit, defendant no.1 or any person on his behalf or through him is hereby temporarily restrained from obstructing possession of the plaintiffs over the suit properties as mentioned in para 1 of the plaint.
3.	Cost in main cause.

Date :- 07.01.2022

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