

MHST100004992023**R.C.S.No. 67/2023****(Sanjay Chandrakant Panchal****- Vs -****Laxman Shankar Gole etc 2)****ORDER BELOW EXH.5 IN R.C.S.NO.67/2023.**

The plaintiffs filed suit for recovery of possession, temporary injunction and mandatory injunction and also filed this application under Order 39 rule 1 and 2 vide Exh. 5 to restrain the Defendant no. 1 from doing further construction over the suit plot till decision of the suit.

2. On service of summons the Defendant no. 1 appeared but failed to file reply to this application. Hence, the application proceeded without say of the Defendant no. 1. The Defendant no. 3 appeared and filed say to this application and admitted the claim of the plaintiff.

3. Considering the application and the arguments advanced by the Ld. Advocates for both the parties, the following points arise for determination against which I have recorded my findings along with the reasons thereto as under:-

Sr.No.	<u>Points</u>	<u>Findings</u>
1.	Whether plaintiff proves that he has prima facie case in his favour?	In the Negative.
2.	Whether the plaintiff proves that the balance of convenience is in his favour?	In the Negative.
3.	Whether the plaintiff proves that	

	he will suffer irreparable loss if the application is not allowed?	In the Negative.
4.	What order?	As per final order.

REASONS

As to Point Nos.1 to 3:

4. Heard, Shri. H. J. Bhandari, the learned advocate for plaintiff. Perused the record along with the suit. In support of the application the plaintiff relied on the copy of suit map, Copy of 8A extract, Copy of development agreements, Copy proceeding book, Xerox copy of Resolution no. 3, Xerox copy of death certificate of Tukaram Kamble, Copy of charge sheet in S.C.C. No. 10/2019, Copy of map extract, etc.

5. It is the claim of the plaintiff that, plot No. 192 and 193 in S.No. 30 Area 10 H. 31 Gunthe situated at village Bhose, Tal. Mahabaleshwar, Dist. Satara are suit plots and those plots are originally owned by Defendant no. 3 i.e. Kaleshwaridevi Sahakari Gruhanirman Sanstha, Branch- Bhose, Tal. Mahabaleshwar, Dist. Satara. The Defendant no. 3 is registered society and it was registered on 21.12.1995. The said society executed one lease deed in favor of Namdeo Shankar Bhosale in respect of Plot no. 193. As per the Registered deed no. 472/67/77 for the period of 99 years. Thereafter, for the Plot no. 193 there was development agreement between plaintiff and Namdeo Bhosale as per the notarised Document no. 2760/2018. At that time Namdeo Bhosale accepted Rs. 2,00,000/- from the plaintiff and handed over the possession of the same.

6. Thereafter, the Defendant no.3 i.e. Kaleshwaridevi Sahakari Gruhanirman Sanstha again executed one lease agreement for Plot no. 192 in favor of Tukaram Dagadu Kamble vide Document no. 466/16/176 Dated 16.02.1996. Thereafter, the heirs of Tukaram namely Deepak Kamble, Mangal Kamble were recorded against Plot no. 192. They have executed the development agreement for the Plot no. 192 in favor of plaintiff for consideration of Rs. 10,00,000/- vide notary Document no. 100/2018. According to the plaintiff both the plots were given to the Kamble and Bhosale for 99 years by the Defendant no. 3 for the development of these plots. However according to the plaintiff the defendants have made encroachment upon those plots in the year 2018. Thereafter the Defendant no. 3 asked Laxmi Kale and Amit Shankar Kale for recovery of the encroachment but Bhosale was old aged person and Dinkar Kamble was resident of Mumbai. Therefore they could not get the possession from the encroachers. The plaintiff had enquired about the said plots to the gram panchayat and Defendant no. 3 but they are not giving proper answer to the questions of the plaintiff. Therefore, Dinkar Kamble lodged the criminal complaint i.e. S.C.C. 10/2019.

7. It is the claim of the plaintiff that meanwhile Dinkar Kamble expired on 08.01.2021 at Mumbai and he has not filed any Civil Suit. But he was likely to file Civil Suit and was going to take possession from the defendant's and give it to the plaintiff. According to the plaintiff deceased Dinkar Kamble took consideration for the development agreement but plaintiff cannot

start the development project. Thereafter the plaintiff asked the Defendant no. 3 in respect of the possession of the suit plots but till today the Defendant no. 3 have not hand over the possession to the plaintiff and they have erected Patra shed and closed the road of the plaintiff. Therefore, lastly plaintiff prayed that the application below Exh. 5 may kindly be allowed and Defendant no. 1 may kindly be restrained from doing any further construction and from causing obstruction to the peaceful possession of the plaintiff.

8. As per say of the Defendant No.3 the plaintiff executed development agreement with Dinkar Kamble and Namdeo Bhosale. The Defendant no. 3 also admitted that the Defendant no. 1 obstructed the execution of development agreement. According to the Defendant no. 3, the Defendant no. 1 have encroached upon the suit plot and erected Patra shed and lastly the Defendant no. 3 submitted that the encroachment of Defendant no. 1 and 2 may be removed and the road may be given to the plaintiff. In fact, the plaintiff claimed that defendant No.1 had done encroachment and claiming temporary injunction against the defendant No.1 only. Therefore, the say filed by the defendant No.3 and supporting plaintiffs' application will not be useful to the plaintiff.

9. I have perused the documents filed in support of the application. The first document is copy of 8-A assessment extract. The perusal of which shows that it is in respect of Property no. 698 and the name of Defendant no. 3 i.e. Kaleshwaridevi Trust is recorded as owner and Dinkar Tukaram Kamble name is recorded

as possessor of this property. Thereafter, I have perused the xerox copies of development agreement between plaintiff Sanjay Panchal and Dinkar Kamble, Mangal Jadhav. This document is in respect of new Plot no. 192. The second development agreement is between plaintiff and Namdeo Bhosale in respect of Plot no. 193. Further the copy proceeding book is the document of Defendant no.3 co-operative society. Further, there is copy of resolution Dated 16.01.2016 under objection certificate for Plot no. 192 and Death certificate of Dinkar Tukaram Kamble. Further, the copy of chargesheet of S.C.C. No. 10/2019 shows that Dinkar Kamble is the informant in that case. Most importantly, it is the claim of the plaintiff that he entered in to development agreement between Dinkar Kamble and Namdeo Bhosale. Therefore, he relied on the xerox copies of notarised document showing that there is development between them. These are the notarised documents and are not registered documents before the Sub-Registrar. The plaintiff claimed that as per these development agreements the original owners handed over possession of these suit plots to him. However, the development agreements are only for the development and construction over the suit plot. The actual possession always remains with the original owners. Therefore, on the basis of these development agreement documents it cannot be said that the actual physical possession of the suit plots were handed over to the plaintiff, because it is only agreement for development of property and the ownership or possession of the property cannot be transferred by way of such development agreements. Therefore, on the basis of these

development agreements it cannot be said that the possession of the suit properties were handed over to the plaintiff.

10. Further the copy of 8-A assessment extract shows name of Kaleshwaridevi Trust and name of Dinkar Kamble. It does not bear the name of plaintiff or the defendant No.3 housing society. Further the plaintiff have not produced on record the copy of 8-A extract in respect of another suit plot. Therefore, none of the documents produced by the plaintiff separates and shows that the plaintiff Sanjay Panchal in peaceful possession of the suit plots.

11. The plaintiff claimed that the Defendant no. 1 is doing illegal construction, erected Patra shed over the same. However, the original owners are different persons and plaintiffs have no locusstandi to claim that someone has encroached upon the suit properties. Because plaintiff has no legal right as of real owner to remove the possession of encroacher upon the suit property. Most importantly, the plaintiff have not made Namdeo Bhosale and heirs of Dinkar Kamble as party to the suit, because they are possessors of the suit plots as per the lease agreements. Therefore, from the above discussion and for the above reasons the plaintiff prima facie failed to prove that he has prima facie case in his favor. The balance of convenience is in favor of plaintiff and if the application is rejected then plaintiff will not suffer irreparable loss. Therefore, for the above reasons, I answer Point no. 1 to 3 in the negative and in answer to Point no. 4, I proceed to pass the following order:

ORDER

- 1] The application below Exh.5 is rejected .
- 2] No order as to costs.

(Dictated and pronounced in open court.)

Date: 08/07/2024.
Mahabaleshwar.

(A. D. Margode)
Civil Judge, Junior Division,
Mahabaleshwar.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer :S. S. Kadam,
(Stenographer, L.G.- Grade -III)

Court :Civil Court Junior Division,
Mahabaleshwar

Date : 08-07-2024

Order signed by the P.O on : 08-07-2024

Order uploaded on :11-07-2024