

ORDER BELOW EXHIBIT 5 IN R.C.S. NO.156/2013

01- This is an application praying for injunction against defendants by restraining them from changing nature of suit property and carrying construction in it till final decision of the suit.

02- Perused the application and say. It is contended by the plaintiff that suit property and house located in it, is his ancestral property. Defendants were in need of premises for residence. They demanded premises from plaintiff. At that time, defendants promised to return the premises as and when asked back after their alternative accommodation. On 14/06/2013, plaintiff issued notice to defendants and asked possession of the premises. Defendants replied to notice on 17/07/2013 and denied ownership of plaintiff. Defendants are claiming title to the suit property. They are trying to change the nature of suit property by raising construction. They have collected construction material like bricks, sand and stone. The loss is likely to be caused to suit property if defendants raised construction. Accordingly, plaintiff prayed for allowing this application.

03- Defendants filed their say at exh. 23 and denied all the contents in this application. They came with the case that, the plaintiff alone was not owner of the suit property. As per them, the Jagubai Eknath Kadam is also heir to the Balku Appa Bongane and she has half share. Defendants further contended that, plaintiff has not given date on which he constructed house in the suit property. So also, he has not given explanation about giving permission to reside in the suit property. The suit property is not in possession of defendants. Plaintiff has no

concern with the suit property.

04- The old survey number of the suit property is 380/4. Out of that, $\frac{1}{2}$ share at the Western side is purchased by Shankar Ramchandra Jadhav from Balku Appa Jadhav on 22/02/1968 for consideration amount of Rs. 99/-. Shankar Ramchandra Jadhav obtained possession of 8 guntha on the same day. He raised construction of 5 Khan in the year 1970 and accordingly the entry was made to the grampanchayat register at serial No. 438. During city survey, name of Shankar Jadhav and other brothers are mutated at serial No. 1526, 1527, 1528 and Sanad is issued. This suit is brought only on account of non entering name of defendants predecessors to the 7/12th extract. In the city survey, defendants and their families are declared to be owner and possessor of the land. At that time, plaintiff had not raised any grievance. So also, he has not filed any appeal.

05- Shankar Ramchandra Jadhav had purchased land for joint family. In the partition, Bhargava and Narayan are allotted with building and remaining premises in suit property. Shankar and Tukaram were allotted with premises in *Gavthan*. Therefore, they were allotted with 1 guntha premises each in suit property. In that premises, defendants had erected shade. They removed the said shade and started raising construction of house with the help of stone, bricks and soil. The said construction is likely to complete. The said construction is likely to fall down in the event injunction is granted and defendants are likely to suffer much loss. The map of city survey is sanctioned and defendants have possession as per map.

06- The grampanchayat number of city survey No. 1526 to 1528 was 438. The partition is effected as per decree in R.C.S. No. 144/1991. In that suit, grampanchayat house No. 438 was also included. The boundaries of the house property were as under :-

At the Eastern side - Jagannath Balu Suryavanshi and now the same person.

At the Southern side - Khashaba Krishnat Jadhav and now his grand son Santosh Vyankat Jadhav.

At the Western side - Ganpati (Nana) Krishnat Jadhav and now purchaser Ashok Ramchandra Salunkhe, and

At the Northern side - road.

Plaintiff has no possession over suit property. He is not likely to suffer any loss if the injunction is granted. Accordingly, defendants prayed for rejecting this application.

07- From above, points arose for my consideration with their findings are as under :-

Sr. No.	Points	Findings
1.	Whether plaintiff proves that prima-facie case is in his favour ?	In the Negative
2.	Whether plaintiff proves that balance of convenience lies in his favour ?	In the Negative

- | | | |
|----|--|------------------------|
| 3. | Whether plaintiff proves that he will suffer irreparable loss if application is rejected ? | In the
Negative |
| 4. | What order ? | As per final
order. |

REASONS

08- In order to support his case, plaintiff relied on the 7/12th extract of survey No. 177/4 at exh. 8, mutation entry No. 6015 at exh. 9, the copy of notice at exh. 3/3, copy of reply to the notice at exh. 3/ 4, the public notice in news paper 'Daily Pudhari' at exh. 3/5, and the photos along with exh. 19. On the contrary, defendants relied on the copy of judgment in R.C.S No. 144/1991 at exh. 26/1, the city survey extracts at exh. 26/2 and 26/3, the notice of city survey at exh. 26/4 and 5, the map at exh. 26/6, the copy of decree in R.C.S. 144/1991 at exh. 26/7, house extract of house No. 438 for the year 1971-72 at exh. 26/8, mutation entry No. 6064, 8067, 8058 at exh. 26/9 to 26/ respectively, the copy of sale deed dated 22 February 1968 at exh. 26/12 and list of building and lands subjected to tax at exh. 26/13. So also defendants filed on record affidavits of Govind Baban Nikam, Kuldip @ Gourav Bhargava Jadhav at exh. 30 and 31. Defendants also filed the tax receipt in the name of Kuldip @ Gourav Bhargava Jadhav at exh. 29/3 and house extract of house No. 558 at exh. 29/4.

09- Heard Advocate A.V. Kodule for plaintiff and Advocate A.R. Janugade for defendants.

10- **Reason as to point No. 1 to 3 :-**

Learned Advocate for plaintiff argued that the possession of defendants over suit property is permissive in nature. Defendants denied to hand over the possession when asked by giving the notice. The defendants are raising construction in the suit property and they are required to be restrained from changing nature of the suit property by raising construction in it. On the contrary, Learned Advocate for defendants argued that, the suit property is purchased by predecessors of defendants and accordingly the entries are effected to the grampanchayat record. As per him, the defendants are in possession on the basis of sale deed and plaintiff has no concern with the suit property.

11- Perusal of all record make it clear that, the name of plaintiff is mutated to 7/12th extract of suit property. There is no entry of defendants to the 7/12th extract of suit property. The defendants have claimed their title to the suit property vide sale deed. Perusal of sale deed filed at exh. 26/12 prima-facie shows that ½ share at the Western side out of block No. 380/4 is purchased by Shankar Ramchandra Jadhav from Balku Appa Jadhav for consideration amount of Rs. 99/- The sale deed also makes it clear that, possession is handed over on the same day. This deed is dated 22/02/1968.

12- The Advocate for plaintiff raised the point of non registration of sale deed. The deed is about the transaction worth Rs. 99/-. As per law, the sale deed of value below Rs. 100/- does not require registration. Advocate for plaintiff argued that, the value of the property is not properly shown in the deed as it was more than Rs.99/- at the relevant time. There is no evidence on record filed by plaintiff to show that, the

value of the suit property was more than Rs. 99/- on 22/02/1968. Therefore, the question of registration of sale deed is not material one.

13- The mutation entry No. 6015 shows that, after the death of Balku Bongane on 02/07/1969, the name of plaintiff is recorded to property as manager of the family. The issuance of notice and reply is admitted to both parties. In notice issued in news paper, defendants have notified to the public that, the plaintiff is likely to transfer the suit property to other party. There is no evidence on record to show that, there was house constructed by plaintiff in suit property.

14- Above all documents, prima facie shows that the defendants predecessors namely Shankar has purchased suit property for the consideration amount of Rs. 99/-. The mutation is not effected to 7/12th extract. The grampanchayat record regarding house and building assessed to tax shows that the entry defendants predecessors is mutated long back in the year 1079. This shows that the possession of the defendants is not mere permissive in nature but possession is with coupled with title. Considering this, the plaintiff is no prima facie case and balance convenience. If the present application is rejected then the plaintiff is not likely to suffer any loss. On the contrary, defendants are likely to sustain loss as the photographs shows that construction is raised to the substantiate stage. Hence, point No. 1 to 3 recorded in the negative.

15- Advocate for the plaintiff relied on observations made in various case laws which are discussed as under :-

a) *Narayan Bhagwantrao Gosavi, Balajiwale V/s Gopal Vinayak Gosavi (1959 lawSuit (SC)163)* in which Hon'ble Apex court dealt with issue of burden of proof. Hon'ble Apex court held the question of burden of proof as academic interest. In the present case, at this stage we are not concerned with the burden of proof. Therefore, it is not required to go in detail of the observations made in this case.

b) *Mariya Margarida Sequeria Fernandes V/s. Erasmo Jack de Sequeria (Dead) through L.Rs. (2012 All SCR 1096)* in which Hon'ble Apex court held that the truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. There can not be any dispute about observations made by Hon'ble Apex court. In the present case, after going through all the documents on record the truth appear to be in favour of defendants.

c) *Narbheramji Gyaniramji Ramsnehi V/s Vivekramji Bhagatramji Ramsnehi (1939 B.L.R. vol. No. XLI 939)* in which it is held by the Hon'ble court that Sanad granted u/s 133 of Bombay Land Revenue court is not in the nature of the documents of the title but it is document affecting rights only between the crown and the person to whom it is granted. In the present case, the defendants are not basing their claim on city survey sanad but on sale deed in their favour. Therefore, the present case law is not applicable.

d) *Makers Development Services Pvt. Ltd. V/s M.*

Visvesvarya Industrial Research and Development Centre (2012 (2) ALL MR 508) in which Hon'ble Apex Court held that the court must make all endeavor to protect interest of the parties while passing interim order of injunction. In the present case, the defendants prima facie found to be owner and possessor of suit property and therefore, their interest protected as per observations in this case.

e) Gorakh Mahadev Surwase Vs. Narayan Balu Dhombe (2012 (2) ALL MR 508) in which Hon'ble Bombay High court set aside injunction order on the basis that the parties have not produced any other material than revenue records to substantiate case of possession. In this case, plaintiff has relied only on revenue record. On the contrary, defendants are relying on sale deed and other revenue records. Hence, plaintiff is not entitled to any benefit from the observation in this case law.

f) Kashinath Bhaskar Datar Vs. Bhaskar Vishweshwar (1952 LawSuit(SC) 9) in which Hon'ble Apex court held as under :-

We agree with Sir Dinsha Mulla at p. 86 of the 5th edition of his Indian Registration Act that,

“ If the document itself creates an interest in immovable property, the fact that it contemplates the execution of another document will not exempt it from registration under this clause.”

The factual position in above case law is different than the facts in case in hand. Hence, the above observations not applicable to the present case.

16- From all above, it is clear that the present application is liable to be rejected. Hence, order :-

ORDER

Application stands rejected.

Patan.

Date. 01/01/2014

(Shashikant R. Mokashi)

Jt. Civil Judge, Jr.Div. Patan.

R.C.S. No. 156/2013

Exh. No. 32

ISSUES

1. Whether plaintiff proves that he is owner of the suit property?
2. Whether plaintiff proves that he had permitted defendants to reside in suit property with condition to vacate it when asked back ?
3. Whether plaintiff proves that defendants failed to vacate suit property when asked by him ?
4. Whether plaintiff plaintiff is entitled to recovery of possession of the suit property ?
5. Whether suit is bad for non joinder of necessary parties ?
6. Whether defendants are entitled for compensatory cost ? If yes, what amount ?
7. What order and decree ?

Patan
Date. 01/01/2014

(Shashikant R. Mokashi)
Civil Judge Jr. Division, Patan