

MHST160011042020



ORDER BELOW EXH. 05 IN R.C.S. NO.124/2020.
(PASSED ON 18/10/2022)

This is an application filed by the plaintiff under Order 39 rule 1 of the Code of Civil Procedure (in short C.P.C) for temporary injunction to restrain the defendant No.1 to 5 as to not obstruct the possession of the plaintiff over the suit properties.

02. The case of plaintiff in short is as under:-

The plaintiff submitted that, he is resident of Mouje Kenjal, Tal-Wai. Suit property bearing Gat No.75 admeasuring 0.01R, Gat No. 610 admeasuring 0.81R, Gat No.316 admeasuring 0.09R, Gat No.1257 admeasuring 0.20R, Gat No.927 admeasuring 0.35R, Gat No.321 admeasuring 4R and Pot Kharaba 1R and Gat No.98 admeasuring 2R, house property bearing Milakat No.102/2002 area 37.9 Sq.Mtr., house property bearing Milakat No.851/2002 area 16.72 Sq.Mtr are the ancestral properties and plaintiff is having peaceful possession over them. (Hereinafter, these properties shall be refereed as 'suit properties').

03. The plaintiff further submitted that, after death of his father in the year of 1998 by mutation entry No. 915 his name as well as the name of his sister and mother were mutated to the suit properties. The sister and mother of the plaintiff are no more. Plaintiff is sole owner and possessor of the suit properties. The plaintiff used to come to the suit properties from Mumbai as he was serving there. After the retirement he is settled in Mouje Kenjal and cultivating the suit properties. The defendant have no right titled, interest in the suit properties and they have not possession over it.

04. The father of plaintiff having brother namely Dharmaji and Haribhau. In the lifetime of grand father they have partition the suit properties and as per the partition the mutation had been taken place and all the co-owners having their separate and independent cultivation over it. As the plaintiff is the only member of his family and having no support from anybody. Moreover, plaintiff is taking care of the daughter of his aunt namely Neha Ghadage. As plaintiff is not having any heirs and defendant wants to grab his property they are now trying to obstruct the plaintiff in his possession by saying that, you should give all your properties to them, if you trying to cultivate the suit properties then we will finish you. Therefore, plaintiff has filed present suit for perpetual injunction and seek the relief of temporary injunction against the defendants.

05. The suit summons were duly served to the defendant No. 1 to 5. The defendant No. 1 to 4 have filed their written statement below Exh. No.42. The defendant No.5 filed pursis below Exh.No.45 and stated that, she is adopting the written statement filed by the defendant No. 1 to 4. The defendants also have filed the counter claim below Exh. No.44 against the plaintiff. The defendants have claim relief of declaration as they are become the owner of the suit properties on the basis of adverse possession.

06. **The case of defendant No.1 to 5 in short is as under:-**

The defendants have resisted the present suit by stating that, the suit properties are the ancestral properties of the plaintiff but the plaintiff did not have the possession over it. The defendants further stated that, till the death of the mother of plaintiff he was having good terms with the defendants but on the say of stringer he has change his nature and behave in rood manner with the defendants. The defendants have further stated that, on 18/04/1995 there was village fair, plaintiff and his father and mother came to their house. The father of plaintiff did not have good

health at that time the father of plaintiff demanded the possession of the suit properties from the father-in-law of defendant No.1 to which he has flatly denied to the same. At that time, the mother of plaintiff try to specify the quarrel took place between the plaintiff is father and father-in-law of defendant No.1. Therefore, the defendants stated that, the suit properties are in their possession since 1995 they are cultivating the suit properties with the knowledge of the plaintiff and till today plaintiff did not ask for possession. Hence, they are become owner of the suit property on the basis of adverse possession. The defendant further stated that, plaintiff did not have possession in the house properties. After the relation between them become adverse to each other the plaintiff is residing in the house of Pravin Tapale on the basis of rent. Therefore, the suit of the plaintiff as well as present application is not maintainable hence liable to rejected.

07. I heard learned advocate Shri.S.V.Kulkarni for the plaintiff and learned advocate Shri.S.S.Bamane for defendant No.1 to 5 after hearing the argument as well as on perusal of the documents produced on record, following points arise for my determination and I record my findings thereon with reasons as under:-

Sr. No.	Particulars	Findings.
1	Does plaintiff prima facie show his interest in the suit property to get relief of temporary injunction to restrain the defendant No.1 to 5 by not to disturb his possession over the suit properties ?	“In the affirmative”
2	Whether the balance of convenience lies in favour of plaintiff ?	“In the affirmative”
3	Whether the plaintiff will suffer irreparable loss if the injunction as prayed is not granted in his favour?	“In the affirmative”
4	What order?	As per Final Order.

REASONS

08. In order to show prima facie case in his favour, the plaintiff has filed on record the following documents:-

Sr. No.	Particulars
1	The 7/12 extract of the suit properties bearing Gat No.75, 610, 316, 1275, 927, 321 and 98 for the financial year 2019-20 mark as Exh.No.7 to 13 respectively.
2	Certified copy of house properties bearing No.101 and 851/2 dated 09.08.2020 mark as Exh. No.14 & 15 respectively.
3	Photo copy of receipt of revenue tax paid by the plaintiff dated 04.11.2020.
4	Photo copy of property tax paid by the plaintiff dated 19.09.2020.

09. In order to falsify the contention of the plaintiff, the defendant No.1 to 5 have filed on record the following documents:-

Sr. No.	Particulars
1	Electricity bill dated 17.06.2019 along with its receipt standing in the name of Dharmaji Keshav Jagtap.
2	Electricity bill dated 17.06.2019 along with its receipt standing in the name of Dharmaji Keshav Jagtap.
3	Electricity bill dated 16.09.2019 along with its receipt standing in the name of Dharmaji Keshav Jagtap.
4	Electricity bill dated 16.06.2019 along with its receipt standing in the name of Dharmaji Keshav Jagtap.
5	Original tax receipts paid for house property bearing No.102/1 and 851/2 dated 17.03.2012, 27.02.2011, 31.03.2007, 05.03.2010, 21.03.2013 and 31.03.2007 standing in the name of Bhalchandra Laxman Jagtap.
6	Original tax receipts paid for house property bearing No.102/1 and 851/2 dated 24.12.2005, 13.03.2003, 05.03.2010, 05.03.2010 standing in the name of Dharmu Keshav Jagtap.
7	Original tax receipts paid for house property bearing No.102/1 and 851/2 dated 20.10.1994, 21.10.1992, 08.12.1990, 07.05.1993, 01.04.1993, 12.09.1991, 23.10.1998, 13.04.1988, 31.03.2001, 24.02.2003 and 08.10.1992 standing in the name of Dharmu Keshav Jagtap.

8	Original light bill along with its receipts dated 15.11.2021, 15.06.2022 and 15.03.2022 standing in the name of Dharmaji Keshav Jagtap.
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Reasons as to point No. 1 to 3 :-

10. All these points are interlinked with each other. Therefore, in order to avoid the repetition, I have taken all these points together for discussion.

11. The learned advocate for the plaintiff submitted that, the defendant No. 1 to 5 in their written statement admitted the relation between the parties as well as the contention of the plaintiff in respect of partition took place between them. Therefore, the title and possession of the plaintiff over the suit property is admitted to the defendants. Moreover, there is ample evidence on the record to show that plaintiff is having possession over the suit property and defendants are trying disturb the possession of the plaintiff. Therefore, it is the fit case to grant injunction in favour of the plaintiff.

12. The learned counsel for defendant No.1 to 5 argued that, since 1995 defendants are having adverse possession over the suit properties. The learned advocate for the defendants further argued that, the father of plaintiff and the father-in-law of defendant No.1 were serving at Mumbai. The father of the plaintiff had demanded the possession of the suit property from father-in-law of defendant No.1 and the defendant's family flatly denied the request of the plaintiff's father since then the defendants are in settled and peaceful possession over the suit properties. Therefore, the suit as well as the present application is not maintainable and liable to be rejected.

13. Before, going in to the controversy between the parties, I would like to state the admitted facts between them. It is admitted to the both the parties that, the Keshav was having three sons namely Dharmaji,

Laxmanrao and Bhaurao. The defendant No.3 and 4 are the grand daughters of Dharmaji and defendant No.1 is the sister-in-law. The defendant No.2 and 5 are the daughters of the deceased Dharmaji. Plaintiff is the son of Laxmanrao. It is further admitted to the both the parties after the death of Keshavrao his son Bhaurao demanded the partition therefore Dharmaji and Laxmanrao were separated from each other. It is further admitted to the parties that, wife of plaintiff is separated from him and he is having no issues. Plaintiff take care of his cousin sister namely Neha.

14. Before considering the pleading of the both side and the admitted facts between the parties, I would like to state here the settled principle of Law that plaintiff must of have to show a prima facie case in his favour and the balance of convenience is lies in his favour. Granting of injunction is a discretionary power of the Court and discretion must be use on sound legal provision. On these touch stone I would like to consider the facts of the case.

15. As stated above defendant No.1 to 5 have admitted the relation with the plaintiff. Moreover, they also admitted that after the death of the forefather of their family namely Keshav partition had took place between the sons of the Keshav. But, defendants come with theory that the father of the plaintiff as well as the husband of defendant No.1 and father of defendant No. 3 and 4 were serving in the Mumbai. The mother of the plaintiff and the mother-in-law of defendant No.1 were the real sister. Therefore, the separation of the suit properties did not take place they remain intact. It is further contention of the defendants that, the mother of plaintiff Gajarabai were residing in Mumbai till 2004 and thereafter she came to reside in the suit properties. The defendants were taking care of the mother of the plaintiff till her last breath. In the year 2012 the mother of plaintiff died and in the year 2015 plaintiff get retired

from his service. Occasionally, plaintiff used to come to the village Kenjal but thereafter his mind is change. Meanwhile, defendants were started to live in rented flat in Ganesh apartment. The defendants further contended that, on the provocation of the some village persons and with the intention to grabs the land of the plaintiff they are created dispute between plaintiff and defendants.

16. The defendants further contended that, on 18/04/1995 for the village festival the plaintiff as well as his father and mother had been to the Kenjal. The health of the father of plaintiff was not good. The father of plaintiff demanded the possession from the father-in-law of defendant No.1 at that time the father-in-law of defendant No.1 flatly denied. Since, then defendants are having adverse possession over the suit properties.

17. After taking in to consideration the recital of the written statements of the defendants, it appears that on the basis of adverse possession they are claiming possession over the suit properties for that purpose they are stating that plaintiff was in service at Mumbai and after his retirement, on the say of other persons he has filed the present suit against the defendants by stating that defendants are obstructing his possession. The defendants have admitted the title as well as the previous possession of the plaintiff over the suit properties. Though, the defendants come with theory of the adverse possession over the suit property but they have been failed to file any substantive documents to give strength to their contentions. For the sake of arguments if we presumed that since 1995 they are cultivating the agricultural land mentioned in the suit para No.1 then they have to filed some related documents such as the crops taken out of the land and sold out in the market or the electric supply for the Well taken by the defendants. But, no such documents have been filed on the record by the defendants therefore, there is only oral contention about the ouster of the plaintiff from the suit properties.

18. More or less, to prove the adverse possession of the defendants of the over the suit properties a trial must be conducted. Till then the 7/12 extract about the suit properties which have shows that plaintiff is in cultivation and his name is entered in to ownership column of the said extract. Though it is settled principle of Law that on the basis of 7/12 extract ownership of the land cannot be determine. But it is also settled principle of Law that, whose name is mutated in cultivation column is presumed to be have possession over the properties. In the present case in the hand the name of the plaintiff is entered in to cultivation column of the suit properties.

19. Moreover, defendants have contented that, as the plaintiff did not have possession in the house properties therefore he is residing in a rented premises. To substantiate this contention, defendants should have filed some documents or the affidavit of the owner of the house as these documents could be filed easily. Though defendants have filed house tax receipt paid to the concerned Grampanchayat in respect of the house properties but it could not make any difference as we know that house property tax can be paid on behalf of owner and who has paid the amount could not get any right title interest in the said properties. Therefore, the tax receipts as well as the electricity bills filed by the defendants on record could not be helpful for them. On the contrary, defendants have take oral defense about the possession over the house properties owned by the plaintiff. This defense could not be taken in to consideration without the support of the documents. Moreover, defendants have filed the counter claim against the plaintiff to declare themselves as the owner of the suit properties. For the declaration of relief sought by the defendants a fullflag trial is necessary. Therefore, making counter claim against the plaintiff by the defendants does not make any difference. Therefore, prima facie plaintiff is having possession of the over the suit properties.

20. The learned advocate for the defendants take the assistance of ratio laid down by Hon'ble Apex Court as well as the Hon'ble High Court to fortify his contention. The case laws as follows:-

i) Rita Premchand and Ors. Vs. State of Maharashtra and Ors. 2001(4)Mh.Mh.L.J 671.

On careful consideration of case law No.1 in which Hon'ble Bombay High Court held that, entries in revenue record are not dis positive or conclusive on question of title. Revenue record create no title and are relevant for fiscal purpose. With due respect to the ratio laid down by Hon'ble Lordship I am of the opinion that, plaintiff not claiming his title on basis of revenue entries. Hence, the fact and circumstances as well as ratio are different and not applicable to the present case.

ii) Bhavana w/o late Arbind Bapat and anothers Vs. Navnit Bhojraj Lakhotia 2015(3)Mh. L.J 472.

I have carefully gone through the case Law cited supra in which The Hon'ble Bombay High Court, Bench-Nagpur, laid down the ratio that, once it is found that, there is no prima facie case established further aspect of balance of inconveniences etc are immaterial and need not be consider. But in the present case in the hand with due respect to the ratio of his lordship the plaintiff has prove his prima facie case hence this case Law is not applicable for present suit.

iii) Prataprai N Kothari Vs. Braganza on 4th May 1999

I have carefully consider the ratio laid down by Hon'ble Apex Court that principle of possessory title or the principle of Law that a person who has been in continuous possession can protect by same by seeking an injunction against any person in the world other than true owner. Though this citation is filed by the defendants but in my opinion it is helpful to the plaintiff that against the true owner no injunction suit is maintainable. Therefore, this citation is also not helpful for the defendants.

iv) Poonam Ram Vs. Moti Ram and others (2019) AIR(SC)813.

In this case Law Hon'ble Apex Court held that, if the suit is for the declaration of title and possession then merely on doubtful material or cursory evidence it cannot be held that plaintiff was never in possession of the property and that too in settled possession. With due respect to the ratio laid down by the Hon'ble Apex Court that, I am of the opinion that, the fact and circumstances of the case cited supra and case in hand are altogether are different and not applicable.

v) Rame Gowda Vs. M. Varadappa Naidu and others (2004)AIR(SCW)4205.

In this case law the Hon'ble Apex Court held that, a person in peaceful and settled possession can seek injunction against rightful owner. With due respect to the ratio laid down by the Hon'ble Apex Court that, I am of the opinion that, the fact and circumstances of the case cited supra and case in hand are altogether are different and not applicable.

21. In this situation, it will be just and proper to grant temporary injunction in favour of the plaintiff to restrain the defendant No. 1 to 5 from obstructing the plaintiff while cultivating of the suit properties. The plaintiff has prima facie shown his right in respect of suit properties. If injunction is not granted then irreparable loss would be caused to the plaintiff. The balance of convenience also lies in favour plaintiff. If the defendant No.1 to 5 are not restrained from obstructing the plaintiff, then it will cause multiplicity of proceeding and plaintiff will suffer. Therefore, the balance of convenience lies in favour of the plaintiff. Hence, I answer points No. 1 to 3 in affirmative.

Reasons as to point No.4-

22. Considering my findings to point No. 1 to 3, I come to the conclusion that the plaintiff has prima facie case in his favour and the

balance of convenience lies in his favour. Therefore, in answer point No.4, I proceed to pass the following order:-

ORDER

1. The application at Exh. 5 is allowed.
2. The defendant No 1 to 5 or anyone on his behalf are hereby restrained from obstructing the plaintiff while cultivating the suit properties mentioned in plaint para 1A, 1B and 1C situated at Mouje Kenjal, Tal-Wai, till final disposal of this suit.
3. Cost shall be costs in main cause.

Date :- 18/10/2022

**(S. S. Nichal)
2nd Jt. Civil Judge Junior Division,
Wai.**