

**R.C.S. No. 6/2023**

Shrirang & Ors.,Vs. The District  
Collector & Ors.,

**ORDER BELOW EXH.5**

( CNR No.:MHST180000062023 )

Plaintiffs/applicants filed this application under Order XXXIX, rule 1 and 2 of the Code of Civil Procedure for granting temporary injunction against defendants.

2. I read an application and reply/written statement of defendant no. 5 at Exh.27. The defendant no. 1 and 2 filed their written statement, but they have not complied the order below Exh. 29 and therefore, the application at Exh. 29 is treated to be rejected and written statement of defendant no. 1 and 2 has not been taken into consideration. Plaintiffs and defendants are absent when called. The learned counsel for plaintiffs and defendants are also absent when called.

It is contention of plaintiffs that, the field Survey no. 107 is really owned by Ramchandra Balwant Kulkarni which is situated at-Shindikurdh, Tal-Man, Dist-Satara.(This is hereinafter referred as the suit property).

According to plaintiffs, on 23.11.1906, the ancestors of plaintiffs namely Maruti Sadashiv Chavan purchased field Survey no. 107 total admeasuring area 15 acre 37 R from Ramchandra Balwant Kulkarni. Since then, Maruti Sadashiv Chavan became the owner and possessor of the suit property. Subsequently, on 19.05.1920, Maruti Chavan sold 3 acre 20 R land of the suit property to the ancestor of

defendant no. 3 to 5 namely Bala Ram kadare. All plaintiffs are the legal heirs of the real owner namely Maruti Sadashiv Chavan. All plaintiffs are in possession and cultivation over entire suit property except 3 acre 20 R land which is in possession of defendant no.3 to 5.

It is further contention of plaintiffs that, during the course of consolidation scheme the field Survey no. 107 was divided in two parts. Field survey no. 107/1 was shown total area 192 R land and field Survey no. 107/2 was shown total area i.e. 482 R land. During the course of consolidation scheme, the field survey no. 107/1 was changed into field block no. 406 and the field Survey no. 107/2 was changed into field block no. 405. However, the field block no. 406 mistakenly shown in the name of plaintiffs and it's area is 1.82 H.R. Similarly, the field block no. 405 was mistakenly shown in name of defendant no. 3 to 5 and it's area is 4.32 H.R.

According to plaintiffs, the defendant no. 3 to 5 are only owner and possessor of 3 acre 20 R land as per the sale deed dated 19.05.1920, but, area of 11 acre 12 R land was shown in the name of defendants. Now, defendants are intending to alienate the excess area to other persons. The defendant no. 3 to 5 are having no any right to alienate excess area. Therefore, plaintiffs filed this suit against all defendants and sought declaration that, plaintiffs are the owner and possessor of the entire area of suit property except 3 acre 20 R land. Plaintiffs also claimed injunction that, defendant no. 3 to 5 shall not alienate any portion of suit property to other persons nor obstruct or disturb to the possession of plaintiffs.

3. Defendant no. 5 appeared and filed reply/written statement at Exh. 27 and opposed to this application on the ground that, defendant no. 3 to 5 are the owner and possessor of entire area of field block no. 405. The defendant no. 3 to 5 are in continuous possession over 11 acre 12 R land of field Survey no. 107/2. Plaintiffs are having no any right in the field block no. 405. Therefore, plaintiffs are not entitled to get any injunction and prayed to reject the application.

4. The following points arose for my determination and I recorded my findings thereon for the reasons given as under.

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether plaintiffs/applicants are having prima facie case in their favour?	<b>Yes.</b>
2.	Whether the balance of convenience lies in favour of plaintiffs/applicants?	<b>Yes.</b>
3.	Whether the irreparable loss will be caused to plaintiffs, if the temporary injunction is refused?	<b>Yes.</b>
4.	What Order?	<b>As per final order.</b>

### **REASONS**

5. In order to prove claim against defendants, plaintiffs produced some documents along-with plaint. Plaintiffs are relied upon the true copy of 7x12 extract of field block no.406, the true copy of 7x12 extract of field block no. 405, the true copy of registered sale deed dated 19.05.1920, the xerox copy of scheme book

regarding field Survey no. 107, the xerox copy of scheme book regarding field Survey no. 107/1 and 107/2, the xerox copy of sale deed dated 23.11.1906, the extract of consolidation scheme regarding field survey 107/2 and field block no. 405 and other relevant documents.

On the contrary, defendants produced some documents i.e. certified copy of mutation letter, the true copy of mutation letter bearing mutation entry no. 987, the true copy of 7x12 extract of field Survey no. 107/1, 107/2 and other relevant documents.

### **AS TO POINT NO. 1 TO 3**

6. It is the submission of plaintiffs that, defendant no. 3 to 5 are only owner and possessor of 3 acre 20 R land as per the sale deed dated 19.05.1920. Plaintiffs are the owner and possessor of remaining land of suit property. However, 11 acres 12 R land of the suit property is mistakenly shown in the name of defendant no. 3 to 5 under the consolidation scheme. Defendant no. 3 to 5 took disadvantage of incorrect entries and attempted to alienate the suit property to other persons. Defendant no. 3 to 5 are having no right to alienate 11 acres 12 R land of the suit property. Therefore, they prayed to grant temporary injunction.

7. On perusal of record particularly, the sale deed dated 23.11.1906 it prima facie shows that, the ancestor of plaintiffs namely Maruti Sadashiv Chavan purchased entire suit property from Ramchandra Balwant Kulkarni for the total consideration amount of

Rs. 99/-. Thereafter, Maruti Sadashiv Chavan became the owner and possessor of entire suit property. The sale deed dated 19.05.1920, also shows that, Maruti Sadashiv Chavan sold 3 acre 20 R land to Bala Sakharam Kadare on 19.05.1920, for the total consideration amount of Rs. 90/- and thereafter, handed over the possession of same area to Bala Sakharam Kadare. Defendant no. 3 to 5 are legal heirs of Bala Sakharam Kadare. Therefore, it prima facie appears that, defendant no. 3 to 5 are only owner and possessor of 3 acre 20 R land of the suit property vide sale deed dated 19.05.1920.

8. The question of ownership and possession and revenue entries and the proceeding of consolidation officer regarding suit property will be decided on the merits of the case. Whether the proceeding of consolidation officer is right or wrong that will be decided on the trial. It requires full-fledged trial. It can not be determined at this stage that, the excess land has been shown in the name of defendant no. 3 to 5. It also can not be held at this stage that defendant no. 3 to 5 are the owner and possessor of 11 acres 12 R land of the suit property. However, defendant no. 3 to 5 have not produced any document to show that, they are the owner and possessor of 11 acre 12 R land of the suit property. Bala Sakharam Kadare was appears to be owner of only 3 acre 20 R land of suit property. Therefore, in my opinion, defendant no. 3 to 5 can not alienate excess land or any other land of the suit property.

9. Plaintiffs are having prima facie strong case against defendants. Plaintiffs came with clean hands. The balance of

convenience is also lies in favour of plaintiffs. The irreparable loss will be caused to plaintiffs, if defendants will alienate suit property. Plaintiffs are entitled for temporary injunction against defendants. I found substance in the application, In the result, I answered to point no. 1 to 3 as affirmative.

10. In view of the above discussion, findings and reasons, I am of the opinion that, plaintiffs are entitled to claim temporary injunction against defendants. Accordingly, I proceed to pass the following order.

**ORDER**

- 1) The application at Exh. 5 is partly allowed.
- 2) Defendant no. 3 to 5 or any other person shall not alienate suit property to any other person and they shall not create third party interest in the suit property till the final decision of this suit.
- 3) Plaintiffs are further directed to adduce their evidence (if any), after framing issues.
- 4) Parties to take note of it.

Vaduj.  
Date: 06.01.2024.

( D.D. Fulzele)  
Civil Judge Senior Division, Vaduj.