



Reg. Civil Suit No. 143/2023

Shailaja Pimple

Versus...

Narayan Machchhi and Ors.

ORDER BELOW EXH. 05

(Passed on this 8th day of August, 2024)

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This is an application under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure (in short 'C.P.C.) for grant of temporary injunction against defendants.

2. It is contentions of the plaintiff that Sudam Tukaram Machchhi and Shobhana Dipak Machchhi were owner and possessor of the field having survey No. 22, area 0.27.8 H. R. of village Panchali, Tal. Dist. Palghar. The said feild is hereinafter referred as "The suit property". They executed registered non-transferable power of attorney in favour of one Ravindra Thakya Patil in respect of the suit property on 03.11.2010. Ravindra Patil executed registered non-transferable power of attorney in favour of the plaintiff in respect of the suit property on 07.02.2011. The plaintiff has purchased the suit property from Sudam Tukaram Machchhi and Shobhana Dipak Machchhi by registered sale deed executed on 04.11.2011 after obtaining requisite permission from the Sub-Divisional Officer, Dahanu Division. The suit property is mutated in the name of the plaintiff. The plaintiff is owner and in possession of the suit property. She has to construct permanent fencing to the suit property. Therefore, she got measured the suit property at the hands of surveyor from the office of the Deputy Superintendent of Land Record, Palghar on 06.06.02023 and fixed the boundaries thereof. In the month of June-July, 2023, defendants tried to interfere and obstruct in her possession over the suit property by damaging her fencing and restraining her from maintaining the suit property.

Therefore, she issued legal notice to defendants through her counsel on 26.07.2023 and called upon them for not to obstruct or interfere in her possession over the suit property. But they did not act upon the said notice and relied it with false contentions on 16.08.2023. Hence, this suit and application.

3. On the contrary, defendants No. 1 to 5 and 8 filed their reply at Exh. 32 and denied all adverse contentions against them. They have contended that the plaintiff is not in the possession of the suit property. She has mutated her name in the revenue record of the suit property with hand in gloves with revenue officer. The suit property is their ancestral property. Earlier, the suit property was owned and possessed by their ancestor Bhikari Naya Machchhi. After his demise, Ala Bhikari Machchhi was tenant of the suit property for the year 1954-55. After his demise, they are owner and in possession of the suit property as his legal heirs. Sudam Machchhi and Shobhana Machchhi have no right and authority to execute power of attorney in favour of the plaintiff. Therefore, the power of attorney executed in favour of the plaintiff is false and illegal. The plaintiff did not handover amount of consideration to the owner of the suit property. The plaintiff is trying to take possession of the suit property from them illegally. The instant suit is false and frivolous. Hence, submitted for rejection of this application with costs.

4. Defendants No. 6, 7 and 9 remained absent despite of service of summons under Order V, Rule 20 of C. P. C. Hence, the suit is proceeded ex-parte against them.

5. Heard Shri. C. J. Raut, learned counsel for the plaintiff and Shri. D. V. Gaikwad, learned counsel for defendants No. 1 to 5 and 8 at considerable length. Following points arise for my determination

and I record my findings with reasons thereon as under:-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiff has made out prima-facie case?	: Yes.
2.	Whether the plaintiff has proved that balance of conveyance lies in her favour?	: Yes.
3.	Whether the plaintiff has proved that she will suffer irreparable loss, if temporary injunction is not granted?	: Yes.
4.	Whether the plaintiff is entitled for the relief of temporary injunction as sought?	: Yes.
5.	What order?	: As per final order.

REASONS

As to points No. 1 to 4 :-

6. Needless to say, that injunction is a form of equitable relief and has to be adjusted in the aid of equity and justice to the facts and circumstances of each individual case. Granting of injunction being itself a discretionary matter, there is no straight jacket formula in the matter of granting or refusing temporary injunction. Depending on each case on its own facts, three cardinal principles governing grant of temporary injunction have been accepted, namely (i) a strong prima-facie case, (ii) the balance of conveyance and (iii) irreparable loss and injury. Ordinarily in deciding a case for seeking temporary injunction the Court must be satisfied that (a) whether a strong prima-facie case, (b) the balance of conveyance is in his favour i.e. it would cause greater in conveyance to him if the injunction is not granted than the in conveyance which the opposite party or the persons claiming through the opposite party would be put to if

temporary injunction is granted and (c) whether the plaintiff would suffer irreparable loss and injury.

7. Keeping in mind the aforesaid settled position, the instant application needs to be decided. It is contentions of the plaintiff that she has purchased the suit property from Sudam Tukaram Machchhi and Shobhana Machchhi by registered sale deed on 03.11.2010 and the suit property is mutated in her name, therefore, she is owner and possessor of the suit property. On the contrary, defendants contended that the suit property is their ancestral property and they are in possession thereof.

8. The plaintiff has filed sale deed, 7/12 extract, village form No. 8-A, Mutation Entries as documents No. 6, 1 to 5 along with list of documents (Exh. 3) on record. Perusal of the said sale deed, reveals that it is executed by the plaintiff as power of attorney of Sudam Tukaram Machchhi and Shobhana Dipak Machchhi in her favour in respect of the suit property on 04.11.2011. It further shows that the possession of the suit property is handed over to the plaintiff on the day of execution of the sale deed. It also shows that power of attorney is attached with the said sale deed, shows that Sudam Machchhi and Shobhana Machchhi have executed power of attorney in favour of one Ravindra Thakya Patil on 03.11.2010 in respect of the suit property. It also shows that they have given whole and sole power to Ravindra Patil in respect of the suit property. The power of attorney executed by Ravindra Thakya Patil, being power of attorney of Sudam Machchhi and Shobhana Machchhi in favour of the plaintiff, is also attached with the said sale deed. Perusal of the said power of attorney, discloses that power of attorney of Sudam Machchhi and Shobhana Machchhi, Ravindra Patil has executed power of attorney in favour of the plaintiff in respect of the suit

property. It also shows that he has given whole and sole power in respect of the suit property to the plaintiff. The power of attorney can executed conveyance deed in his own favour, if he has authorized to do so. Perusal of the said sale deed, reveals that the plaintiff has executed sale deed as a power of attorney of Sudam Machchhi and Shobhana Machchhi in her favour in view of the power of attorney executed on 07.02.2011 as power of disposal of the suit property is given to her. 7/12 extract of the suit property is attached with the said sale deed. Perusal of the said 7/12 extract, reveals that Survey No. 22, area 0.27.8 of village Panchali, Tal, Dist. Palghar is recorded in the name of Sudam Tukaram Machchhi and Shobhana Dipak Machchhi in view of mutation entry No. 352 and it also shows that they were in possession for the year 2010-11.

9. Mutation Entry No. 230 (document No.4), discloses that the suit property was mutated in the name of Pandurang Ditya Machchhi as legal heir of the deceased Ditya Kanha Machchhi on 02.05.2001. Perusal of Mutation Entry No. 352 (document No. 2), reveals that name of Sudam Machchhi and Shobhana Machchhi were recorded in the revenue record of the suit property as legal heirs of Pandurang Ditya Machchhi from 12.09.2009. Mutation Entry No. 629 (document No. 3) shows that the suit property is mutated in the name of the plaintiff on 26.11.2011 in view of sale deed executed on 04.11.2011. The said mutation entries are certified by the Circle officer. Perusal of 7/12 extract and village form No. 8-A (documents No. 1 and 2), shows that name of the plaintiff is recorded as occupant of the suit property. The sale deed executed on 04.11.2011 is a registered instrument. The said sale deed and aforesaid revenue record have a presumptive value. The aforesaid sale deed and revenue record shows prima facie that the plaintiff is owner and in possession of the suit property. No doubt, every presumption is

rebuttable one. Therefore, the burden is on defendants to rebut the said presumption.

10. On the contrary, defendants No. 1 to 5 and 8 came with defence that the suit property is their ancestral property. Earlier their ancestor Bhikari Naya was a tenant of the suit property and after his demise, his son Ala Bhikari Machchhi was tenant of the suit property till the year 1954-55, thereafter, some persons have mutated the suit property in their name by hand in gloves with the revenue authority. They have filed 7/12 extract and mutation entries as document No. 1 to 3 along-with list of documents (Exh. 33) on record. Perusal of 7/12 extract (document No. 1), reveals that name of Shraavan Machchhi is recorded by deleting name of Mahadev Naik as occupant in column No. 7 of the 7/12 extract of Survey No. 43 of village Panchali, Tal, Dist. Palghar in view of mutation entry No. 14. It also shows that name of Machchhi Ala Bhikari came to be recorded as tenant by deleting name of Bhikari Naya. It also shows that name of Naya Bhikari is also deleted in view of mutation entry No. 722. But mutation entry No. 352 shows that name of Bhikari Naya is mutated as tenant of Survey No. 9 of village Panchali. Mutation entry No. 597 discloses that name of Ala Bhikari came to be recorded as tenant of Survey No. 9 of village Panchali by deleting name of Bhikari Naya Machchhi on 09.02.1959. The 7/12 extract and mutation entries filed by defendants on record shows that revenue record of Survey No. 9 of village Panchali was earlier recorded in the name of Mahadev Vitthal Naik as occupant and by deleting his name, name of Shraavan Machchhi is recorded as occupant. It also shows that earlier name of Bhikari Naya was recorded as tenant and name of Ala Machchhi is recorded as tenant by deleting name of Bhikari Naya Machchhi. But there is nothing on record which shows that Survey No. 9 is renumbered as Survey No. 22. Area of the Survey No. 22 and Survey

No. 9 is also not identical. Defendants could have produced renumbering parcha on record to show that Survey No. 9 is renumbered as Survey No. 22. But defendants failed to produce any documents on record to show that Survey No. 9 is renumbered as Survey No. 22. There is nothing on record which shows that the property recorded in the name of ancestor of defendants and the suit property is the same. Defendants failed to prima facie rebut the presumption which is prima facie in favour of the plaintiff. Therefore, one can prima facie hold that the plaintiff is owner and possessor of the suit property.

11. The plaintiff has contended that defendants have tried to interfere and obstruct in her possession over the suit property in the month of June-July, 2023. It is also contentions of the plaintiff that she has issued legal notice to defendants and called upon them for not to interfere or obstruct in her possession over the suit property on 26.07.2023. But defendants did not act upon the said notice and they issued notice reply to her on 16.08.2023. Plaintiff has filed copy of notice and notice reply on record alongwith list of document (Exh. 3). Perusal of notice, reveals that the plaintiff has issued legal notice through her counsel to defendants on 26.07.2023 and called upon them for not to obstruct or interfere in her possession over the suit property. Perusal of notice reply of defendants issued to the counsel of the plaintiff on 16.08.2023 shows that they have denied ownership and possession of the plaintiff over the suit property. But defendants did not show prima facie that they are in possession of the suit property. Defendants have denied ownership and possession of the plaintiff since beginning. This conduct of defendants prima facie shows that they are interfering or obstructing in possession of the plaintiff over the suit property.

12. In view of aforesaid discussion, the plaintiff succeeded to establish that she has prima facie case. As regards, balance of conveyance, documents on record prima-facie indicates that the plaintiff is in possession of the suit property. On the other hand, defendants failed to establish their possession over the suit property. Therefore, one can hold that the balance of conveyance lies in favour of the plaintiff. Defendants failed to show that they are in possession of the suit property. On the contrary, the plaintiff has established that she is in possession of the suit property and defendants are trying to interfere or obstruct in her possession over the suit property. If temporary injunction is not passed to restrain defendants from causing interference or obstructing in her possession over the suit property, the plaintiff will suffer greater loss than defendants. Therefore, defendants need to be restrained from causing interference or obstruction in possession of the plaintiff over the suit property by way of temporary injunction. Hence, I answer points No. 1 to 3 in affirmative, accordingly. In view of these affirmative findings, the plaintiff is entitled for temporary injunction. Therefore, instant application needs to be allowed. Consequently, I answer point No. 4 in affirmative.

As to point No. 5:-

13. In view of above discussion and findings, in result and in answer to point No. 5, I pass following order :-

ORDER

1. The application is allowed.
2. Defendants No. 1 to 9 are hereby restrained from causing interference or obstruction in possession of the plaintiff by way of temporary injunction till the decision of the suit.

3. Costs in cause.

(Dictated and pronounced in open court.)

Palghar.
Date:- 08.08.2024.

(Mahendra K. Sorte)
Jt. Civil Judge, Jr. Dn.,
Palghar.