

In the Court of Principal District Judge, Wardha

R.C.A. No. 62/2022

**Sundarabai Kolhe
.Vs.
Anandrao Khekade+1**

Order Below Exh.08
(Passed On 24/06/2022)

1. Perused the application, say and record. Heard learned Advocate for both the sides.
2. The appellant/original plaintiff has prayed for restraining respondent No.1 and 7 (original defendant No.1 and 7) from dispossessing appellant from the field survey No.97 situated at Jangalapur, Tah. Seloo, District Wardha. Appellant has filed this appeal against the judgment and decree in RCS No.04/2015. The trial court has decreed the said suit partly. The trial court has held that the de-facto possession of field survey No.97 is with appellant, but answered issue No.1 against the appellant by holding that 7/12 extract is standing in the name of respondent No.7. The said finding about possession of respondent No.7 is illegal and has been challenged.
3. During pendency of this appeal respondent No.1 and 7 tried to dispossess appellant and her son. The son of appellant lodged report to police. So the

possession of the appellant on field survey No.97 required to be protected.

4. Respondent No.7 filed reply at Exh.16. They have denied the contentions of the appellant. The trial court has rightly held that field survey No.97 is not ancestral property, but it is self-acquired property of respondent No.1, which is presently owned by respondent No.7. Actually, respondent No.7 has de-facto and de-jure possession. They have denied that they tried to dispossess appellant. The appellant has tried to dispossess the respondent No.7 by taking benefit of impugned judgment of the trial court.

5. Read the application and say. Heard learned counsels on both sides. Perused documents produced on record from both the sides. Considering the rival submissions, following points are necessary to be answered on the basis of which the fate of this application is based. So the following points are answered with reasons as below :

	<u>POINTS</u>	<u>FINDINGS</u>
1]	Whether the plaintiff/appellant : has prima-facie case ?	No
2]	Whether the balance of : convenience lies in favour of plaintiff/appellant ?	No

3]	Whether the plaintiff/appellant would suffer irreparable injury, if the injunction prayed is not granted?	:	No
4]	What order ?	:	As per final order.

=REASONS=

POINT NOS. 1 TO 3 :

6. Learned advocate for the appellant has invited my attention tendered observations of trial court in para No.54 of impugned judgment and order, in which it is held that de-facto possession of field survey No.97 is of plaintiff/appellant. It is also discussed that de-jure possession is with respondent No.7. It has also invited my attention to affidavit of DW Gulabrao before trial court wherein he has contended about possession of respondent No.1 over field survey No.97 since last 30 to 35 years. The said witness Gulabrao filed affidavit in this appeal, in which stated about possession of respondent No.7 over field survey No.97 and he has cultivating the land.

7. On the other hand, learned advocate for the respondent invited my attention to cross-examination of plaintiff/appellant in which she has admitted that she is not cultivating the land. He has also invited my attention to cross-examination of DW Anandrao, wherein he stated about cultivation of the land by son

of sister, as he get grain from it. Learned advocate for the respondent has submitted that meaning of this contention would be that the land might be cultivated on income share basis.

8. In order to get relief as prayed, plaintiff has to establish possession over field survey No.97. It is undisputed fact that plaintiff is sister of respondent No.1 to 3. It is not disputed that respondent No.1 Anandrao Khekade sold field survey No.97 to respondent No.7 Kantaram Arekar. Respondent No.4 to 6 are the children of Mainabai, the sister of appellant.

9. It appears that the appellant filed RCS No.04/2015 for partition and separate possession and perpetual injunction. The said suit is decreed partly only in respect of share of appellant in field survey No.10/1, 150 and 149.

10. It appears from the arguments of both the parties that the appellant have filed application for temporary injunction in RCS No.04/2015 for restraining respondent No.1 and 7 from disturbing possession of appellant on field survey No.97. It was allowed. Respondent No.1 and 7 preferred appeal against that order in MCA No.12/2015. The said appeal was allowed in favour of present respondent No.1 and 7 and the application of the appellant was rejected. Then the appellant preferred Writ Petition bearing

No.3838/2016 against the order in MCA No.12/2015. But subsequently this proceeding was unconditionally withdrawn by the appellant. So, learned advocate for the respondent submitted that the possession of the respondent No.1 and 7 was held in MCA No.12/2015 and it was continued till the decision of the suit.

11. It was the contention of the appellant in the trial court that this field survey No.97 was purchased by respondent No.1 from the income of joint family property, therefore, she has share in it. But, it is not held by the trial court that field survey No.97 is ancestral or joint family property. It is held by the trial court in para No.44 of the judgment that the respondent No.1 is not in possession of field survey No.97 as it is sold out to respondent No.7.

12. It has come in the cross-examination of DW Anandrao before trial court that field survey No.97 is in possession of sister's son. This witness Anandrao has denied that the field survey No.97 is under cultivation of appellant. Merely, on this basis it would be difficult to accept the possession of appellant over field survey No.97. The sister's son of the appellant is not party to RCS No.04/2015.

13. Learned advocate for the appellant has invited my attention to affidavit dated 15/01/2022 of DW Gulabrao before the trial court, in which he has

stated about possession of respondent No.1 over field survey No.97 and same witness filed affidavit in this appeal dated 17/06/2022 and mentioned therein about possession of respondent No.7 over field survey No.97, since its purchase from respondent No.1 Anandrao in 2015. However, these affidavits will not be of help to the appellant as it does not establish possession of appellant over field survey No.97.

14. Similarly, appellant has admitted in her cross-examination in the trial court that she is not cultivating agricultural land. She has further stated that her son is cultivating the land. That the son of appellant is not the party to the proceeding. So, it is difficult to accept that there is material showing prima-facie possession of the appellant over the suit property. In absence of such material, if order of injunction is not granted there will not be inconvenience or loss to the appellant. On the contrary, inconvenience will be caused to the respondent. Therefore, appellant is not entitled to get relief as prayed.

15. It is well settled that in seeking injunction of temporary nature, appellant has to satisfy the court that not only she has a prima-facie case, but also balance of convenience is in her favour and if injunction is not granted she will suffer irreparable loss. Hence, for the reasons stated above I answer the points

No.1 to 3 in the negative and pass following order.

- ORDER -

The application is rejected.

Cost in main cause.

Wardha.

[Ashutosh N. Karmarkar]

Date : 24/06/2021

Principal District Judge, Wardha.

CERTIFICATE

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

Name of Stenographer : G. A. Umate, Grade-II
Court : Principal District and
Sessions Judge, Wardha
Date : 24/06/2022
Order signed by the : 24/06/2022
Presiding Officer on
Order uploaded on : 24/06/2022