

RCS NO. 38/2018
NIMBAJI VRS. BHAVRAO
AND OTHERS

ORDER BELOW EXH.14

1. This is an application filed by defendant no. 2 namely Vasanta Ramchandra Thombare against the plaintiff for grant of temporary injunction under Order 39 Rule 1 and 2 r/w. Section 151 of the Civil Procedure Code.

2. I have perused the application and heard learned Adv. Shri. R. U. Khadse for the defendant/applicant and learned advocate Shri. Mahalle for the plaintiff/non applicant.

3. **The briefs facts of the applicant/defendant as under :-**

The description of the properties of the applicant/defendant have given in para no.1 of the application as under :

A.

| Mauje | Gat No. | H. R. | L. R. | Share |
|-----------|---------|-------|-------|-------|
| Chincholi | 67 | 2.50 | 5.05 | 0.81 |

Bounded as :-

Towards East :- The field of Dilip Natthu

Towards West :- The field of Waman Bhagat

Towards North :- The field of Suresh Bhagat.

Towards South :- E-class land.

B.

| Mauje | Gat No. | H. R. | L. R. | Share |
|---------|---------|-------|-------|-------|
| Asegaon | 217 | 5.89 | 4.00 | 0.47 |

Bounded as :-

Towards East :- The field of Aaga Patel

Towards West :- The field of Sayed Lukeman

Towards North :- The field of Javed Kha

Towards South :- The field of Akhil Patil

C.

| Mauje | Gat No. | H. R. | L. R. | Share |
|---------|---------|-------|-------|-------|
| Asegaon | 238 | 1.16 | 2.30 | 0.43 |

Bounded as :-

Towards East :- The field of Akhil Khan

Towards West :- The field of Mohd. Driver

Towards North :- The field of Kadar

Towards South :- Dam

The above properties are situated at Asegaon and Chincholi.

4. The defendant no. 2 is owner and possessor of the suit property by way registered sale-deed. The above properties are

purchased by the applicant and his wife. The original plaintiff has no right an interest in the suit property. The original plaintiff means non applicant for the said application has filed suit for partition and possession against the present defendant. The original plaintiff is claiming the possession of the property. The prima-facie case, balance of convenience are in favour of the applicant/defendant no. 2. If the injunction is not granted, then defendant/applicant will suffered irreparable loss, Hence, prayed for grant of temporary injunction.

5. The plaintiff has filed his say below Exh. 17. He has no dispute about the suit property and about boundaries. The plaintiff have denied the other allegation made by the defendant. He has denied the ownership and possession of the defendant. The plaintiff has stated that he is joint owner of the suit property and has share in the suit property. There is no any essential ingredients in favour defendant/applicant. Hence, prayed for rejection of the temporary injunction.

6. I have heard both the parties at length.

7. After hearing both the parties, the following point arise for my determination to which I have recorded my findings along with reasons.

| Sr. No. | Point | Findings |
|---------|---|---------------------------|
| 1 | Whether the prima-facie case made out in favour of the applicant/defendant ? | Affirmative |
| 2 | Whether the balance of convenience lies in favour of the applicant/defendant ? | Affirmative |
| 3 | Whether the applicant/defendant will suffer irreparable loss, if injunction refused ? | Affirmative |
| 4 | What order ? | As per final order |

Reasons

8. In order to support the contention of the defendant/applicant has filed 15 documents below list Exh. 13. The defendant has also filed 1 document below list Exh. 19.

9. On the other hand the plaintiff has filed 4 documents below list Exh. 4

10. **As to point no.1** :- In the present suit, the defendant no. 2 is claiming owner of the properties mentioned in this application. He is claiming the possession of the property. On the other hand the plaintiff has filed the suit for partition, separate possession and mense profit. The plaintiff is claiming the 1/3 share in the suit property as the suit property is joint family property of the plaintiff and defendant.

11. In order to resolve the controversy between the parties, I have gone through the documents filed by the both the parties on the record. The record shows that the plaintiff filed his suit for the

property situated in Gat No. 33 at village Dabhadi Gat No. 67 at village Chincholi, Gat No. 238 , 217 situated at village Asegaon. The plaintiff has filed copy of the 7/12 below list Exh. 4 of Gat No. 33. It is situated at village Dabhadi having area 1 H 98 R. The name in the ownership column are Nimbaji Ramchandra Thombare, Bhaurao Ramchandra and Vasanta Ramchandra. In possession column the name of the Nimbaji Ramchandra is appearing. The another copy of the 7/12 of Gat No. 238 situated at Asegaon. It's showing the name of the Juned Khan Ahemad khan having area 0.58 R and collectively possession of Fatimunissabi and other for 0.15 R. The name of the Kavita Vasanta Thombare is showing for 0.43 R. The another copy of the 7/12 of Gat No. 217 is showing that the name of the Vasanta Ramchandra Thombare for the 1 H 47 R and other owners those are not relevant for this case. The copy of the 7/12 of Gat no. 67 situated at Chincholi is showing the name of Kavita Vasanta Thombare for 0.81 R land and other owner.

12. The copy of the registered sale-deed dated 01.06.2015 filed by defendant/applicant below list Exh. 13. After perusal of the said copy of registered sale-deed, it appears that Sau. Kavita Vasanta Thombare has purchased 0.81 R land in the Gat No. 67 situated at Chincholi from Dilip Natthuji Pandit in the consideration of Rs. 3,75,000/-. The another copy of registered sale-deed filed by defendant below list Exh. 13 is also showing that Kavita Vasanta Thombare has purchased 0.43 R land in Gat No. 238 situated at Asegaon from Kisan Ramji Ingole on 24.11.2010 in the consideration

of Rs. 41,000/-. The defendant/applicant has also filed another copy of the registered sale-deed below list Exh. 13 which is showing that Vasanta Ramchandra Thombare has purchased 1 H 62 R land in Gat No. 217 situated village Asegaon.

13. After perusal of the all documents it clearly appears that the defendant Vasanta Ramchandra Thombare has purchased 1 H 62 R land of Gat No. 217 situated at Asegaon. The registered sale-deed available on record are showing that the defendant no. 2 Kavita Vasanta Thombare has purchased 0.81 R land from Gat No. 67 situated at Chincholi and also purchased 0.83 R land in from Gat No. 238 situated at Asegaon. This facts are showing the properties mentioned in this application are purchased by the defendant no. 2 and 3. The copy of the order passed by the S.D.O. Mangrulpir is available on record. The same is filed by defendant. After perusal of the said copy it appears that the present defendant Vasanta Ramchandra Thombare had filed an application for correction of the mutation entry in respect of Gat No. 119 and 121 which were belonging to his father Ramchandra Godaji Thombare. The S.D.O. Mangrulpir has passed an order and directed the Talathi to Correct mutation entry in respect of Gat No. 119 and 121 and insert the name of the Bhavrao Ramchandra Thombare and Vasanta Ramchandra Thombare. There are no documents filed by the plaintiff on record to show that the Gat No. 67, 217, 238 are joint properties of plaintiff and defendant. Hence, the prima-facie case, is made out in favour of the defendant. The temporary injunction can

be filed by the defendant. Hence, I answered point no. 1 in an affirmative.

14. **As to point no. 2 and 3** :- In the present suit it appears that the prima-facie case, is in favour defendant/applicant. The documents in respect of Gat No. 67, 217, 238 having in favour of defendants. There are sale-deed in respect of above Gat Number. The properties and share claimed by the plaintiff in the suit can be decided on merits after leading the evidence of the both parties. Hence, I answered point No. 2 and 3 in an affirmative. Hence, I proceed to pass following order.

ORDER

1. The application of Exh. 14 is allowed.
2. The plaintiff, his relatives or any other person or any agent claiming on his behalf hereby temporary restrained from not causing obstruction to the possession of the Gat No. 67, 217, 238 only, till the disposal of the suit.

Dt:- 14/06/2019

Sd/-
(M.R.Panad)
Civil Judge (Jr. Dn.)Mangrulpir

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

Name of the Court :- Civil Judge (J.D.) & J.M.F.C.,
Mangrulpir

Presiding Officer :- M.R.Panad

Order Uploaded by :- S. J. Shaikh Stenographer (L.G.)

Date of Order :- 14-06-2019

Order signed by P.O. on :- 14-06-2019

Order uploaded on :- 17-06-2019