

ORDER BELOW EXH.05

(Passed on this 23rd day of August,2016)

1] By way of present application applicant seek injunction against defendant predecessor in title.

2] The applicant submitted that the suit property was purchased on two distant occasion by way of register sale deed dated 28/04/2008 and 25/11/ 2010 in total 2 Hector and 81 R at village Kamargaon. The applicant and defendant are daughter and father in relations. Defendant has two sons and two daughters, after their marriage he effected partition of the joint family properties amongst his sons and daughters. In said partition defendant received 7 acres land and out of which he sold 2.90 land to the applicant on two different occasions by way of registered sale deed. As at the time of execution of sale deeds the defendant was in need of money for expenses of medication of his wife who was suffering from paralysis and defendant wants to sale out his lands. The applicant has purchased the lands on consideration paid to defendant. Since then she has possessing and cultivating said field as owner. Then after defendant went to reside with his son but some quarrel took place and his son refused to maintain him, and defendant came to reside with applicant. At the time of Dusahara defendant went to house of his son and reside there. After some days defendant came to house of applicant and made quarrel in filthy language, to get those properties re-transferred in his name which was purchased by applicant; also lodged complaint with PS Gadage Nagar Amarawati, PS Dhanaj those were filed after investigation as no offence made out against her.

3] In fact since execution of registered deed of sale the name of the applicant is in title as well as possession column of the revenue record. Defendant filed applications for recording his name in cultivation column of the suit properties, which were decided in favour of the defendant by SDM (Tahasildar) but are stayed by SDO in appeal preferred being aggrieved. Meanwhile, defendant steal standing crop for which complaint is filed in PS Dhanaj but no cognizance was taken. All these facts suggested that the defendant is interested in grabbing the suit property and to dispossess the applicant. With these submissions prayed for injunction against the defendant.

4] After service of notice defendant appeared in the proceeding and filed his say prayed to reject the same. It is submitted that the sale deeds executed in favour of the applicants are without consideration. It was agreed amongst parties that the possession will be hand over after full payment but yet no payment was made hence no question of inducting applicant in possession of the suit property. Even filed suit RCS 06 of 2013 against present applicant for cancellation of sale deed and applicant has committed breach of trust. The defendant never parted with the possession and he is in continuous possession on the suit property. The SDO decided the appeal and remanded back to SDM for fresh consideration, as such, defendant is in possession. With these submission prayed for rejection of application.

5] Heard both learned advocate and perusal of record following question arose for my consideration and I record my finding with following reasonings;

Point of determination

- 1] Does applicant shows prima facie case lies in his favour?
- 2] Does applicant shows that she would suffer irreparable loss and balance of convenience is lies in her favour?
- 3] What order?

Answers:

- 1] Affirmative
- 2] Affirmative
- 3] As per final order.

:: REASONINGS ::

6] In view of instant application applicant seek injunction against non-applicant to protect his cultivation for present season. Before entering into the discussion it would be proper to mention here that instant suit is pending for evidence and application is filed to protect the final fruits of the suit during pendency. Therefore, at this juncture the documents on which parties are relied though Photostat copies are taken into consideration.

7] For brevity of the discussion admitted facts are narrated, as follows:

- i) the family relations between applicant and non-applicant is admitted as daughter and father,
- ii) registered sale deed executed in year 2008 and 2010 in respect of suit property, though the non-applicant denied imparting possession in favour of applicant by virtue of

alleged sale deed.

As to point No. 1:

8] To show the prima facie case plaintiff filed on record 7/12 extracts of the suit property for year 2010 to 2015 along with form No. 8, form for agricultural insurance and copy of both sale deeds, through which she claims her title which follows possession. Ld. Advocate for applicant submitted that present suit is filed for the relief of protection of her possession over the suit property which she acquired through title and yet the said sale deeds are not turned down by the court. Therefore, being a document which is registered it has its own presumptive value and it satisfactorily shows the possession of the applicant over the suit property. In reply Ld. Advocate for non-applicant submitted that those sale deeds were executed without consideration and therefore, yet applicant is not inducted in the possession of the suit property. Apprehending malafide intentions non-applicant prayed for inquiry by the revenue officer to fill possession column in his name. Accordingly, inspection was taken and SDM directed to record his name in the possession column of the suit field.

9] Having regard to the rival submissions of both learned advocates. The submissions made clear that there is a registered document through which applicant claims her possession. Both parties have filed application to record their name in the possession column of the suit property. At this juncture current position is, that the order of the SDM is stayed by the SDO. Therefore, the aspect of the prima facie case needs to be considered on the rival documents available on record.

10] On perusal of record there are number of application filed before the Talathi and police station with contentions regarding possession. Also, affidavit of driver of tractor who prepared and sow the suit field alongwith Makatedar.

11] But at the same time there are affidavit filed for the non-applicant in support of his case alongwith same type of receipts of driver of tractor which allegedly prepared and sow the same land. Therefore, those documents are stand against each other and not available for consideration without formal proof.

12] But to consider the prima facie case, at this juncture when revenue record is itself volatile it is just and proper to consider the documents which had presumptive value in the eye of law i.e. registered sale deeds.

13] From beginning applicant claims her possession in view of the registered sale deed, for a moment it is accepted that out of two sale deeds one sale deed is under challenge but still it is not held illegal or bogus. Therefore, said sale deed is well available for consideration.

14] On perusal of sale deeds available on record, it made clear that, at the time of the execution and registration of the same the vendor admitted that the purchaser is put in the possession. Nothing is filed on record contrary to the contents of the said instrument.

15] In Indian legal system protection of possession from unlawful or forceable dispossession is accepted in various judgments. Also, it accepts that the possession follows title except rebutted. Therefore, in view of the available documents and in the light of the argument of both

sides I come to conclusion that the applicant satisfactorily shows prima facie case lies in her favour.

As to point No. 2:

16] For granting temporary injunction to consider the aspect of balance of convenience along with balance of inconvenience is also needs to be taken into consideration, coupled with irreparable loss if order refused.

17] In view of para supra the applicant satisfactorily shows her possession over the suit property in the light of registered instrument executed in her favour for transfer of title. Therefore, now it is just to consider firstly the balance of convenience along with balance of inconvenience. Yet the instrument through which the applicant received her title are not declared as void therefore applicant ought to have considered as legal owner of the suit property. As mention in para unless disproved we accepts that the possession follows title and then after if applicant could not cultivate her piece of land it will cause inconvenience to applicant. As such the balance of convenience is lies in favour of the applicant.

18] No doubt the suit property is agricultural filed. Hence, if anyone who is entitled for cultivation if prevented from cultivating a single season would cause irreparable loss, because it is loss not only for a season and crop yield therefrom, but there are lot of other factors which are depended on the agricultural yield for a agriculturist. Moreover, there is no specific criteria to measure the loss if he was prevented from cultivating land. Hence, if applicant is prevented for cultivating the suit

property and injunction refused, then applicant will suffer irreparable loss.

As to point No.3

19] Applicant prima facie show her possession and right to cultivate the suit property and also balance of convenience is lies in her favour to protect her possession if injunction refused then she will suffer irreparable loss, therefore the applicant is entitled for the interim injunction. Accordingly I pass following order:

ORDER

- 1] Application (Exh.05) is hereby allowed.
- 2] Defendant, his agents, servants or anyone claiming on his behalf are temporarily restrained from disturbing the possession of plaintiff to the extent of 2-H 81-R land situated in Block No. 341 at Kamargaon, Tq. Karanja, Distt. Washim without following due process of law during pendency of suit.
- 3] Cost in cause.

Karanja.

Dt/-23-08-2016.

(Mukul M. Chitale)
Joint Civil Judge (Jr.Dn.) Karanja.

CERTIFICATE

I affirm that the contents of this P. D. F. File Judgment/Order are same word to word, as per the original Order.

Name of Stenographer : D. B. Lachure, Stenographer (LG)
Court Name : Jt. Civil Judge (JD) & JMFC, Karanja.
Date : 23-08-2016
Order signed by the Presiding
Officer on : 23-08-2016
Order uploaded on : 24-08-2016