

ORDER BELOW EXHIBIT- 05

(Passed on 24/01/2024)

1. The present application is filed under Order 39 Rule 1 and 2 r/w 151 of the Code of Civil procedure, 1908. (Hereinafter referred to as *The C.P.C.*) to restrain defendant No.1 and 2 from disturbing peaceful possession and ownership right of the plaintiff. Say filed by the defendants at Exh.14. Moreover, both the parties filed their written notes of argument at Exh.29 and 30 respectively. Heard Shri. R. D. Thakare learned advocate for the plaintiff/applicant and Shri. P. N. Chaudhari learned advocate for the defendant/non-applicant. (Hereinafter parties are referred to as the "*Plaintiff*" and "*Defendant*"). Perused the plaint, application for T.I., reply and affidavits filed in support of the application for temporary injunction and the documents.

2. filtering unnecessary details in short it is the contention of the plaintiff that, he has filed a suit through power of attorney his son namely Gajanan Damodar Patil. The plaintiff owns the ancestral property bearing Gram Panchayat Property No.130, Gram panchayat Vitholi total adm. 4845 sq. ft. He further owns the property bearing gram panchayat property No. 131 situated at the North Side of the G.P. Property No. 130 of the Gram panchayat road having East-West 37 ft. and North-South 17 ft. The said property No.131 is wrongly mentioned as East-West 24.5 in the record of Gram panchayat. Therefore, he has filed application before the concerned officer for correction of the same. The property i.e. Gram panchayat property No.131, Mouje-Vitholi Tq.Manora, Dist.Washim adm. East-West 37 ft. length and North-South 17 ft. width with total area 629 sq. ft.,

having the Four boundaries as towards East house of Ravindra Barse, towards West house of Pralhad Vitholika, towards North Pundlik Chistalkar and now house of defendant No.1 and towards South Gram panchayat road (The property as described in para No.2 of the plaint and application Exh.5 is the subject matter of the suit and hereinafter referred to as *“The suit property”*.)

3. It is the further contention of the plaintiff that the father of the plaintiff namely Motiram Balaji Patil had bought the suit property on 24/04/1971 from Baliram Raut, Bapurao Raut, Devidas Raut, Kisan Ingole and Namdev Ingole for the consideration of Rs.200/-. He had also bought other property of East-West 43 ft. and North-South 21.6 ft. Both the properties purchased on the single sale agreement of Rs.3 stamp paper before the punch witnesses. The said properties given in possession of the plaintiff prior to its sale transaction. There was the house of Pundlik Chistalkar in between above two properties of the plaintiff. Therefore, there was the possession of the plaintiff over the suit property prior to 24/04/1971 and also 50 years ago. The said property was used for the purpose of keeping the agricultural articles.

4. It is the further contention of the plaintiff that, the plaintiff had entered into agreement with the father of the defendant No.2 Pundlik Chistalkar on 17/05/1971 with respect to property East-West 13.11 mtr. i.e. 43 ft. and width of North-South 8.23 mtr. i.e. 27 ft. approximately total area 1161 sq. ft. open land and thereby gave the possession of the same to the Pundlik. Accordingly, the Pundlik became the owner of the 1161 sq.ft. land. As the Pundlik had service at Palodi the said land was vacant. Therefore, the father of the defendant No.1 namely Digambar Narayan Dhanaskar and his two

sons including defendant No.1 took the said property for residential purpose. Thereafter, Pundlik retired from his service and he was in need of his property. Therefore, he asked the defendant No.1 and his father to return his property. At that time, the father of the defendant No.1, he himself and his brother denied to hand over the same by raising quarrel. Therefore, on 26/07/1993 the father of the defendant No.2 Pundlik entered into agreement of sale of the property with the father of the plaintiff namely Motiram Patil for the total consideration amount of Rs.10,000/-. Accordingly, Motiram gave cash of Rs.8,000/- to the Pundlik and remaining amount was to be given after obtaining of the possession by the order of the Civil Court within 15 days. Therefore, the defendant No.2 had no right to sale the said property.

5. It is the further contention of the plaintiff that, the father of the defendant No.2 Pundlik filed suit bearing No. RCS No. 86/1993 for possession of the property having measurement as 37 x 37 against the father of the defendant No.1. On 25/08/1999 C.J.J.D., Mangrulpur decreed the suit in his favour and thereby father of the defendant No.1 was directed to hand over the possession to the father of the defendant No.2. Thereafter, the father of the defendant No.2 filed appeal bearing No.132/1999 before the Hon'ble District Court, Washim. Same was dismissed on 07/09/2002. Thereafter, the father of the defendant No.2 Pundlik died. The father of the defendant No.1 did not file appeal against the order of the District Court.

6. It is the further contention of the plaintiff that, as per the order of District Court the father of the defendant No.2 owns the property bearing Gram panchayat property No.84 total area 37 X 37,

Gram panchayat Vitholi and same was required to be updated into the record of Gram panchayat. After the death of Pundlik the said property was updated in the name of defendant No.2. But at that time, its total area was recorded as 2280 sq.ft. at the place of 1369. And thereafter, the defendant No.2 executed registered sale-deed in favour of the defendant No.1 bearing document No.1171/2020 and accordingly he executed sale-deed in extension of the property in his possession. The boundaries of the same have been wrongly mentioned. Therefore, same is not binding on the plaintiff.

7. It is the further contention of the plaintiff that, the suit property is open land and the defendant No.1 has purchased the property situated at the North side of the plaintiff's property illegally from the defendant No.2 without the permission of the plaintiff. Accordingly, the defendant No.1 is illegally trying to possess the open land i.e. suit property of the plaintiff. It was necessary for the defendant No.2 to deliver the possession of the property as per agreement dated 26/07/1993 between the father of the plaintiff and defendant No.2. The supra registered sale-deed is illegally executed and the defendant No.1 is enjoying the possession of the property without having any legal right with intent to disturb the possession of the plaintiff. On 16/06/2022 the defendant No.1 raised quarrel with the plaintiff. The plaintiff lodged the report of the same with P.S. Manora. Therefore he has prayed for temporary injunction restraining the defendants from disturbing his possession and ownership right over the suit property.

8. The defendants filed their say at Exh.14 and denied all the material contentions of the plaintiff. He further submitted that, the defendant No.1 is the resident of Vitholi since from his grand

parents. He possesses property No.202 situated at Gram Panchayat Vitholi, admeasuring the East-West 30 ft. and North-South 76 ft. total area 2280 ft. Some portion of the said property is built up and remaining other portion is open land. The said property was initially owned by the father of the defendant No.2. The four boundaries of the said property towards East Gram Panchayat road, towards west Pralhad Vitholika, towards North defendant No.1 and towards South Gram Panchayat road. The said property including open land was not in use.

9. It is the further contention of the defendant that, the grand father and father of the defendant No.1 asked to the father of the defendant No.2 for the residence purpose from the said land in the year 1957-58. Therefore, he gave build up house and open land i.e. approximately half portion of the said land to the defendant No.1. The family of the defendant No.1 and 2 had cordial relation. Thereafter, the Pundlik offered to sell the said land to the father of defendant No.1. At that time it was agreed that the consideration amount has to be given each year and he will execute sale-deed. The father of defendant No.1 had given some cash amount to the Pundlik. As the complete amount was not paid, the property already in possession of the defendant No. 1 was kept in their possession and the remaining property was in possession of the Pundlik.

10. It is the further contention of the defendant that, in the year 1989-90 it was not possible for the father of defendant No. 1 to pay Pundlik. Thereafter, Pundlik asked for money. But, the father of defendant No.1 did not pay. Therefore, Pundlik asked him to vacate the residential property. As the alternative arrangement was not available with the father of defendant No. 1, he did not vacate the

house and open land in his use. Therefore, Pundlik filed R.C.S. No. 86/1993 against defendant No.1 and his brother and father. In the said suit defendant No. 1 had taken the plea of adverse possession. But, the suit of the plaintiff came to be decreed. Thereafter, the father of defendant No.1 filed appeal before District Court, Washim and same was dismissed in the year 2002.

11. It is the further contention of the defendant that Pundlik died in the year 2001. Therefore, his property came to be updated in the name of his legal heir defendant No.2. Thereafter, defendant No. 1 had given cash amount of Rs. 20,000/- to the defendant No.2. However, the alleged sale transaction was not completed. Thereafter, till 2020 defendant No.1 paid to the defendant No. 2 as per their previous understanding. Thereafter, in the year 2020 the market value of the property No.202 came to be fixed as Rs.3,00,000/- Thereafter, the defendant No.1 paid all the residual amount including his previous payment in connection with the sale. On 12-10-2020 defendant No.2 executed registered sale-deed with respect to property No. 202 having area 30 X 25 mud construction, 30 X 51 open land having total area 2280 Sq.ft. and the possession of the same was handed over to the defendant No 1. From that time the defendant No.1 is the owner and in possession of property No. 202 total area 2280 sq.ft.

12. It is the further contention of the defendant that plaintiff had no connection with the said property No.202 having area 2280 sq.ft. The plaintiff used to pressurize defendant No.2 for obtaining the possession of the said property. The plaintiff had asked defendant No.1 to sell the open land to him. But he denied the same. At that time plaintiff threatened defendant No.1 that he will not leave

without obtaining the said open land. The plaintiff intended to illegally obtain the said land. The plaintiffs P.O.A. is active in Gram panchayat politics and during his tenure he had updated Extract 8 in the names of his family members. He has illegally possessed so many land. Plaintiff has no evidence in his favour. There is part possession of the defendant No.1 on property No.202 since from 1958 and since from 2020 he has complete possession thereon. Prior to 2020 there was possession of the defendant No.2 over the open land. Plaintiff has no legal document of his ownership and possession with respect to suit property. He was never in possession of the suit property. Plaintiff has prepared false and forged documents. There is every possibility to obtain illegal possession of the property belong to the defendant No.1. Therefore, they have further prayed for rejection of the application with compensatory costs.

13. I have gone through the rival submissions of both sides. I have also perused the documents placed on record in support of their respective contention. Following points arose for my determination. I record my findings for the reasons given below.

Sr. No.	POINTS FOR DETERMINATION	FINDING
1.	Whether the plaintiff has made out prima facie case ?	NO
2.	Whether balance of convenience lies in favour of plaintiff ?	NO
3.	Whether any irreparable loss would cause to the plaintiff, if injunction as prayed is not granted ?	NO
4.	What order ?	As per final

	order
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REASONS

14. In order to substantiate the case of plaintiff he has relied on documents such as the copy of power of attorney, challan, extract 8 of the suit property, copy of the sale agreement dt. 17/05/1971, sale-agreement dt.26/07/1993, copy of the judgment and decree in RCS No.86/1993, affidavits of witnesses at Exh.16, 17 & 18, copy of map, application to Gram panchayat Vitholi and copies of NCR.

15. On the other hand defendant has also relied on the documents i.e. affidavits of witnesses at Exh.19, 20 & 21, boundary map, photographs, copy of extract 8-A Gat No.202, house tax receipt, extract 8-A of property No.174 and sale-deed of property No.174.

AS TO POINTS NO.1 TO 3:-

16. As these points are interconnected thus same are being taken together for discussion. Relief of injunction under Order 39 Rule 1 is equitable and discretionary in nature. Such discretion can be exercised only when person comes to court with clean hands, has not suppressed material facts and makes out a prima facie case. It is the case of the plaintiff that he is the owner and in lawful possession of the suit property. Therefore, he has every right to protect his property from illegal obstruction.

17. In view of the present facts of the case it is necessary for the plaintiff to establish the alleged threat and injury to his legal right and possession by the defendants. As with respect to the prima facie case of the plaintiff, the fact that the defendant No.2 has sold his property adm.2280 sq.ft. to the defendant No.1 vide registered sale-

deed No.1171/2020 dt.12/10/2020, so also judgment and decree in RCS No. 83/1993 and RCA No. 132/1999 is not disputed. But, the plaintiff has contended that the alleged sale-deed is not binding upon him as the boundary of the said property is wrongly measured and same has been shown in extent of its actual boundary.

18. It is argued by Ld. Adv. for the plaintiff that, documents on record proved that the plaintiff is the owner and in possession of the suit property. The alleged sale-deed between the defendant No.1 & 2 is not binding upon him. There is presumption under Section 90 of the Indian Evidence Act, regarding production of 30 years old documents. Suit property is situated adjoining to the defendants property. Affidavits filed by the defendants does not corresponds to the adjacent land holders, so also the said witnesses are politically motivated. The documents on record proved the case in favour of the plaintiff. It is since from 1993 the possession of plaintiff and his boundaries are clear. This established the case in favour of the plaintiff and against defendant. Therefore, he is entitled to the relief as prayed. The Ld. Advocate for the plaintiff has further relied upon the Hon'ble Authority in the case of ***Natthu S/o Baliram Nichat & Ors. Vs. Rajendra S/o Tukaram Madankar [2022 (2005) ALL MR 601]*** in support of his contention.

19. Per contra Ld. Advocate for the defendant argued that, the plaintiff did not come with clean hands. The documents filed by plaintiff on record regarding alleged agreement is not registered as per law. Further, documents on record does not match with the description of the suit property. There is disparity in the area mentioned in the suit and the area on the mutation records. Sale-deed dated 12/10/2020 discloses that defendant No.1 is the absolute

owner and in possession of the property No.202. Plaintiff has no prima-facie case and balance of convenience in his favour. Plaintiff filed suit only to mislead Court by hiding material facts. Plaintiff did not file old extract 8 as per the alleged old agreements. The said agreements are false and fabricated. He further prayed for rejection of the application. The Ld. Advocate for the defendant has further relied upon Hon'ble Authority in the case of Hanuman Prasad Gupta Vs. Jagya Bhan Gupta & Ors. [AIR 2004 MP 244] and also Rama Shanu Naik Dessai Vs. Director, Goa State Urban Development Agency [AIR Online 2019 BOM 2882] in support of his contention.

20. The Ld. Advocate for the plaintiff further argued that the ownership and possession of the plaintiff over the suit property is duly proved by the affidavit of witnesses, Gram panchayat extract 8 and also order of the Court. Perused the documents submitted by both the parties. It appears from the sale-agreement dt. 24/04/1971 that the said transaction was executed between Motiram and Baliram Raut and four others with respect to property East-West 37 ft. and North-South 17 ft. Further, the sale-agreement dt. 17/05/1971 is executed between Pundlik Chistalkar and Motiram Patil is with respect to property East-West 43 ft. and North-South 27 ft. situated at Mouje-Vitholi, Giroli Tq.Mangrulpir, Dist.Akola. Further, agreement dt. 26/07/1993 is executed between Motiram Patil and Pundlik Chistalkar is with respect to property No.84 adm. East-West 27 ft. and North-South 37 ft situated at Mouje-Vitholi Gram panchayat Vitholi. Further, the property involved in the judgment and decree of RCS No. 86/1993 is house No.84 including house and open land having 37 X 37 area. Perusal of the documents extract 8 for the year 2021-2022 with respect to suit property No.131 discloses

the type of the land as open, having East-West 24.5 and width North-South 17 ft. total area 416 sq.ft. Admittedly, the alleged sale-deed No.1171/2020 dt.12/10/2020 is executed by the defendant No.2 in favour of the defendant No.1 with respect to property No.202, Mouje-Vitholi, Gram panchayat Vitholi.

21. Further, the record discloses that the both the parties have filed affidavits and counter affidavits of witnesses so as to prove their possession and ownership over their respective properties. Further, it is the fact on record that the plaintiff contended about the alleged agreement of the year 1971 and 1993 supra for the first time in the present suit. Admittedly, neither the plaintiff nor his father was the party either to RCS No.86/1993 and also RCA No.132/1999. Further, the description of the suit property does not match with the document extract 8 of property No.131 and also other documents relied by the plaintiff on record. So also, alleged old agreements are not registered as per law. Therefore, same cannot be relied upon at this stage.

22. However, from the discussion supra no cogent documentary evidence produced by the plaintiff on record which discloses that at present the plaintiff is owner and in possession of the suit property as contended by him and the defendants are trying to obstruct his lawful possession. The document filed by the plaintiff is not sufficient to decide the matter in question. Plaintiff did not prima-facie establish that the defendant illegally obstructed his lawful possession over the suit property. On the contrary, documents on record discloses that defendant No.1 is the owner and in possession of the property No.202 as stated supra.

23. Hence, in view of the facts and circumstances of the case at this stage it will not be just to hold that there is an injury or threat to the legal right of the plaintiff. However, the fact of the validity and execution of the alleged old agreement as contended by plaintiff is required to be proved by detailed evidence and same is a part of merit. So also, due to distinguishable facts and circumstances of the present case Hon'ble Authority relied by the plaintiff in the case of *Natthu Nichat* cannot be applied to the facts of the present case. Per contra, the ratio laid down in the Hon'ble Authority in the case of *Hanuman Gupta* and *Rama Dessai* cited supra is squarely applicable to the facts of the present case so as to decide matter in issue between the parties.

24. While granting temporary injunction the plaintiff has to prove his prima-facie case on the date of the filing of the suit. In absence of cogent document's on record mere general contentions / allegations are not sufficient to grant the relief as prayed by the plaintiff. The plaintiff has not made out a strong case in his favour. In such case it will not be appropriate to grant temporary injunction as prayed at this juncture. Thus, I came to the conclusion that, plaintiff did not make out a prima-facie case. Hence, in view of the above discussion point no. 1 is answered in negative.

25. It appears that the plaintiff approached the Court and prayed for restraining the defendant from obstructing the suit property. From plaint, affidavit, counter affidavits, documents and submissions by both the sides, at this stage no prima-facie case made out in favour of the plaintiff. If the relief as sought is granted to plaintiff, same would result into restraining the other lawful possessor and owner from possessing their lawful right. Therefore,

in the given sets of the facts there did not appear a chances of irreparable loss to the plaintiff, which can not be compensated in terms of money. Considering the above discussion, plaintiff did not establish balance of convenience and chances of irreparable loss in his favour. Hence considering the facts and circumstances of the case both these points goes against the plaintiff. Accordingly point no. 2 and 3 are answered in negative.

AS TO POINT NO. 4

26. In view of the findings given to points No. 1 to 3 the application deserves to be rejected. Hence, in answer to the point no. 4, I am inclined to pass the following order.

ORDER

1. Application Exh.5 is rejected.
2. Costs in main cause.

(Dictated and pronounced in open Court).

Date:- 24/ 01/2024

Sd/-
(Ms. T. G. Bansod)
Jt.Civil Judge (Jr.Dn.)
Manora.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order are same word to word as per the original Judgment/Order.

Name of the Stenographer	-	Smt. R. K. Chavhan(Grade-III)
Court	-	(Smt. T. G. Bansod) Jt. CJJD & JMFC, Manora.
Date of Judgment/Order	-	24/01/2024
Judgment/Order signed by the Presiding Officer on	-	24/01/2024
Judgment/Order uploaded on	-	02/02/2024