

ORDER BELOW EXH – 05

(Passed On 14th Day of July, 2023)

1. This is an application under **order XXXIX Rule 01 & 02 of Code of Civil Procedure, 1908**, for the grant of temporary injunction. Suit is for perpetual Injunction.

Contentions of plaintiffs / applicants in nutshell is as under;

2. Plaintiff no.1 has purchased 01 H 43 R land of Gat No.31 at village Kharshi Tq. Pusad, Dist. Yavatmal (herein after referred as “suit property”) vide registered sale-deed. Plaintiff no. 2 cultivates the suit property. Plaintiffs are in settled possession of suit property since the date of sale-deed. Plaintiffs have kept ready the suit property for sowing. Defendants are trying to illegally interfere into the possession of plaintiffs over the suit property. On 21.06.2023, when plaintiffs had gone in the suit property, defendants obstructed them. Plaintiff no.1 had gone to Pofaali police station for lodging complaint about the said incident. However, police told him to approach the court as dispute is of civil nature. Thus, cause of action arose and plaintiffs filed present suit for perpetual injunction. Vide present application, plaintiffs have prayed for the order of temporary injunction restraining defendants from disturbing their possession over suit property.

3. Defendants vide their say, have denied the contentions of plaintiffs and have contended that, plaintiffs is not legal owner of suit property. It is contended further that, plaintiffs are not having possession over 01 H 43 R of land. Plaintiffs are in possession of land which was possessed by his previous owner. Plaintiffs did not carry out measurement of suit property at the time of it's purchase. Land

records office had given notice to plaintiff no.1 Jayashri on 24.2.2023 for measurement of suit property. On 06.03.2023, the said office carried out measurement of suit property. At that time, it is revealed that only land of 01 H 00 R land is in possession of plaintiff no.1. Plaintiffs have not disclosed anything in the plaint about the said measurement. Plaintiffs have not filed the suit with clean hands. On 21.06.2023, defendant no.1 and 2 were not in village. Plaintiffs have mentioned false incident in the suit. As plaintiffs are having knowledge that they are not in possession of 01 H 43 R of land, they are trying to sow the land possessed by defendants. Previous owner of plaintiffs have sold only 01 H 00 R of land area to plaintiff no.1 which was allotted to him by the government. Plaintiffs are not having possession of 01 H 40 R land and therefore, they are not entitled to ask relief of temporary injunction.

4. Considering the assertions and relief sought, following points arise for my determination. The findings there-on are recorded and reasons are stated hereunder;

POINTS

FINDINGS

- | | |
|--|-------------------------|
| 1. Whether there is a prima-facie case in favour of plaintiffs ? | In Affirmative |
| 2. Whether balance of convenience tilts in favour of plaintiffs ? | In Affirmative |
| 3. Whether irreparable loss will be caused to plaintiff, if relief sought is not granted ? | In Affirmative |
| 4. What order ? | Application is allowed. |

REASONS

As To Point No. 1 to 3 :-

5. As the points No. 1 to 3 are very much interconnected and interrelated, the reasons relating to them are discussed conjointly. Heard **Shri. V. S. Deshmukh** learned advocate for plaintiffs and **Shri. S. B. Jadhav**, learned advocate for defendants. Both parties have filed certain documents which will be addressed at the relevant stage.

6. Plaintiffs have filed sale deed of the suit property below List at **Exh. 24/1**. On perusal of the sale-deed, it is prima-facie seen that, it is in relation to the suit property and is duly and properly executed by the Vijay Bhatu Rathod, Santosh Bhotu Rathod and Shantabai Devidas Chavan in favour of plaintiff no.1. Thus, prima-facie it is seen that, plaintiff no.1 is the owner of suit property. Again, the recitals of the sale-deed specifically shows that, the suit property was sold for the consideration of Rs. 8,30,000/- and the amount was paid by the plaintiff no.1. It appears that the area of 01 H 43 R land was sold by the said sale deed and accordingly possession was also handed over to plaintiff no.1.

7. It is the contention of defendants that plaintiff no.1 was not having possession of 01 H 43 R of land at the time of purchasing suit property. Learned advocate for defendants submitted that one of previous co-owner Mr. Vijay Rathod has filed affidavit and stated on oath that he was having possession of 01 H 00 R of land only and sale deed was executed in respect of that much of area only. However, it is to be noted here that as the Mr. Vijay Rathod and other co-owners have validly executed sale deed of 01 H 43 R of land in favour of

plaintiff no.1 and accepted consideration of it, therefore, now he can't contend that he was having possession of 01 H 00 R of land only at the time of execution of sale deed. It is also to be noted here that nothing has been brought on record to show that the sale-deed is ever challenged. Thus, it is in force and therefore prima-facie the plaintiff no.1 is the owner of the suit property.

8. Plaintiffs have filed on record 7/12 extract of suit property along with list **Exh.4** which shows that, after the execution of the sale-deed and on the basis of the sale-deed, the suit property was mutated in the name of plaintiff no.1. The 7/12 extracts further shows that, in the year 2022-23, plaintiff no.1 was in possession of the suit property and crops TUR and SOYABIN were cultivated over the suit property.

9. Defendants have contended that land record office carried out measurement of suit property and area of 01 H 00 R of land was found in possession of plaintiff no.1. However, she has not disclosed the said fact. Defendants have filed on record copy of measurement map issued by land records office. Learned advocate for defendants submitted that the said map shows boundaries of suit property by dotted line. It is the only portion of land which shown by dotted line is in possession of plaintiff no.1. On perusal of said map, it reveals that one dotted line has been drawn in the middle of portion of land of Gat no.31. It is true that land records office has prepared the said map by carrying out measurement but it does not reflect or disclose as to how much area of land is in possession of plaintiff no.1 as on today. It also does not show as to how much area of land is in possession of defendants or any other person. It further does not show as to how

much portion or area of land was measured by land records office at the time of measurement. On the basis of said map and dotted line shown on it, it can not be said that plaintiff no.1 is in possession 01 H 00 R of land only. On the contrary, on the basis of sale deed and 7/12 extract, plaintiff no.1 prima facie appears to be in possession 01 H 43 R of land i.e. Suit property. Defendants have also failed to show that previous owner of plaintiff no.1 was having possession of 01 H 00 R of land only before execution of sale deed and at the time of execution of sale deed.

10. Under such circumstances, the material put forth by plaintiffs seem to be sufficient to establish the prima-facie case of plaintiffs. The material available on record prima-facie shows that, plaintiff no.1 is the owner and possessor of suit property and that defendants are not having any concern with the suit property. Plaintiffs have stated on oath that, on 21.06.2023, defendants have entered the suit property, obstructed and threatened plaintiffs. Defendants have not shown anything contrary about the contention of plaintiffs except denial that they were not present in village on 21.06.2023. Thus, the material on record is also sufficient to prima-facie show that, there is threat to the possession of plaintiffs over the suit property.

11. Order 39 rule 1 of the Code of Civil Procedure, 1908, says that,

“Where in any suit it is proved by affidavit or otherwise,-

(a) that,

(b) that. . . .

(c) that the defendant threatens to dispossess that plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act or make such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit, as the court thinks fit until the disposal of the suit or until further orders”

In the present case, prima-facie there exists a danger to the possession of plaintiffs over the suit property. Therefore, as per O.39 R.1 and R.2 of the Code of Civil Procedure, 1908, granting of order of temporary injunction is just and necessary.

12. Form the above discussion it reveals that, plaintiffs have sufficiently and prima-faciely put forth their case. The balance of convenience also tilts in favour of plaintiffs and if the temporary injunction is not granted, then there is every likelihood that, plaintiffs will be dispossessed from the suit property. Thus, the loss caused to plaintiffs will definitely be irreparable one. Under such circumstances, I conclude the points number 1 to 3 in affirmative and record my finding accordingly.

As To Point No. 4 :-

13. As I have answered the point No. 1 to 3 in affirmative, I proceed to pass the following order ;

Order

- a) Application is allowed.
- b) Defendant No. 1 and 2 or any persons on their behalf or claiming through them are hereby temporarily restrained from obstructing the possession of plaintiffs over the suit property by any means till disposal of the suit.
- c) No order as to cost.

Pusad.

Dt. 14.07.2023.

Sd/-

(Vishwajit B. Chavan)

6th Joint Civil Judge Junior Division,
Pusad.