

Regular Civil Suit No.48/2013
Pandurang..Vs..Soma+2

Order Below Exh. 5

1. This is an application filed by plaintiff restraining defendants by temporary injunction from obstructing the peaceful possession of plaintiff in a suit for declaration, injunction, specific performance and permanent injunction.

2. The suit of plaintiff in brief is that the Gut No.27 area admeasuring 6 H.7 R. situated at Dhoki Tq.Kelapur District Yavatmal is ancestral property of defendant no.1 Soma Vyankati Maykalwar and his mother Radhabai of their joint family and defendant no.1 is manager of H.U.F. (For the sake of brevity it will be referred as 'Suit property'). There is no partition in joint family. Now mother of defendant no.1 is no more. After her demises her two daughters i.e. defendant no.2 Gangubai Ramyaa Kongalwar and Smt. Laxmibai Laxmanna Punnawar are only her legal heirs. Smt. Laxmibai Laxmanna Punnawar is now more. She is having defendant no.3 Gangareddy Lxmannna Punnawar as her legal heir. So, defendant no.1 to 3 are necessary parties in the suit.

3. Plaintiff further contended in his plaint that defendant no.1 being manager of Hindu undivided family and in the interest of joint family decided to sell suit property to plaintiff and plaintiff agreed for the same on 24-05-2002. The consideration was fixed

at Rs.35,000/-. They have executed one agreement of sale on 24-05-2002 and earnest money of Rs.20,000/- was paid to defendant no.1. It was further agreed that balance amount will be paid at the time of execution of sale deed. There was no time limit for execution of sale deed as defendant no.1 has to obtained permission from the Collector. At the same time defendant no.1 has handed over the possession of the suit property to plaintiff and plaintiff is cultivating the same. Defendants are not entitled for obstructing the possession of plaintiff. Then, plaintiff has paid Rs.10,000/- to defendant no.1 against the suit property and only Rs/.5,000/- remained to be paid. Defendants started obstructing the peaceful possession of plaintiff and therefore, plaintiff has filed this suit for various relief and this application for temporary injunction.

4. In pursuance of summons and notice, defendant no.1 appeared and filed his written statement below Exh.20. Defendant no.2 and 3 failed to file W.S. and therefore, suit to be proceeded without W.S. against them and order to that effect is passed below Exh.1 on 31-07-2013. Defendant No.1 has denied each and every statements, contentions and allegation made by plaintiff in the plaint and submitted that suit is bad for non-joinder of necessary party. Plaintiff has not properly valued the suit. According to him suit property is in possession of defendant no.1. At present market value of suit property is Rs.30,00,000/- and therefore there is no

question of selling the same for Rs.35,000/-. Plaintiff would have filed suit within three years from 24-05-2002 and therefore, suit is not filed within time. Plaintiff alone has no right to sell suit property . As plaintiff is not in possession of suit property, he is not entitled for temporary injunction.

5. In view of rival contentions of the parties, following point arise for my determination and I have recorded my finding on such point for the reasons stated thereunder :-

<u>Points</u>	<u>Findings</u>
1) Whether plaintiff has made out prima-facie case in his favour ?	.. In affirmative
2) Whether balance of convenience lies in favour of plaintiff ?	.. In affirmative
3) Whether plaintiff will suffer irreparable loss in case injunction is refused?	.. In affirmative
4) What order ?	.. As per final order.

REASONS

As to point No.1 to 3 :-

6. Heard both Advocates at length. Plaintiff has filed voluminous documents in support of his suit. The agreement to sale dated 24-05-2002 is at Exh.4/1 by which defendant no.1 agreed to sell the suit property to plaintiff for consideration of

Rs.35,000/-. At the same time defendant no.1 handed over the possession of suit property to plaintiff. Further plaintiff has paid Rs.10,000/- to defendant against the suit property on 20-12-2003 and document to that effect is filed below Exh.4/2. Order of Naib Tahsildar dated 28-12-2006 is at Exh.4/3. He has confirmed the possession of plaintiff over the suit property. The 7/12 extract in respect of suit property are filed below Exh.4/4 to 4/11. Copy of notice issued by plaintiff to defendant no.1 is at Exh.4/12 and reply of defendant no.1 through his advocate at Exh.4/13. All these documents shows the possession of plaintiff over the suit property since 24-05-2002. The main contention of defendant no.1 is that he alone has no right to sell the suit property to plaintiff is not believable as he himself executed agreement to sale and handed over the possession of suit property to plaintiff. It is to be noted that defendant no.2 and 3 who ought to have come with this defence failed to file reply to this application. The market value of suit property can not be decided at this stage. Likewise, the limitation in respect of present suit also can not be decided at this stage as it is mixed question of law and facts. This two points will be decided after evidence of both the parties. From the documentary evidence it can be safely said that plaintiff is in possession of suit property and defendants want to obstruct the same considering their defence. Thus, plaintiff has made out prima-faice case in his favour. Balance of convenience lies in

favour of plaintiff. Plaintiff will suffer irreparable loss if injunction is refused. I, therefore, answer point no.1 to 3 in affirmative. Hence the following final order.

O R D E R

1. Application is allowed.
2. Defendants No.1 to 3, his servant, agent and any person claiming through them are hereby restrained by temporary injunction from obstructing the peaceful possession of plaintiff over the suit property i.e. Gut No.27 area admeasuring 6 H.7 R. situated at Dhoki Tq.Kelapur District Yavatmal more particularly described in para 1 of the plaint till decision of this suit.
3. Cost in cause.

Dt/-23-07-2014

(H.C. Parmar)
Jt.Civil Judge (Jr. Dn.)
Kelapur.