



Before the Court of 11th Joint Civil Judge Junior Division, Kolhapur.

Presided over by

(Prerana Rajaram Nikam)

Regular Civil Suit No.01 of 2018.

CNR No:MHKO020033592017.

Shri.Satish Shivrudra Shete & Ors.4

V/s

Shri.Ekanath Sakharam Metil & Ors.7.

Order below Exh.No.5.

(Date: 07/10/2019)

Nature of Application :

1. The present application is filed by the plaintiffs for temporary injunction under Order 39 Rule 1, 2 and section 151 of the Code of Civil Procedure.

Grounds of the application :

2. The present suit is instituted for perpetual injunction in respect of the property mentioned in para 1 of the plaint. The father of plaintiff No.1, 2, 4 and husband of plaintiff No.3 namely Shivrudra Gangaram Shete, purchased area of 0.13.07 R by registered sale-deed No.4844/2006 and area of 0.06.87 R by registered sale-deed No.1237/2014 out of Gat No.1505. The defendants also purchased some area out of Gat No.1505 from original owner namely Aakaram Babu Patil, Sakharam Babu Patil and Parashram Aaba Patil. Defendants by taking disadvantage of the said sale-deed, are trying to grab the excess area by making encroachment over the share of the plaintiffs. Therefore, the plaintiffs filed the present application for temporary injunction

restraining defendants, from disturbing their peaceful possession over the suit property and restraining defendants from dispossession of the plaintiffs.

Say of the defendants :

3. Defendants filed their written statement and say at Exh.15 and denied adverse allegations made against them. It is their case that, the plaintiffs failed to make party to all shareholders of Gat No.1505. Defendants purchased area of 0.10.20 R out of Gat No.1505, from Aakaram Babu Patil, Sakharam Babu Patil by registered sale-deed No.2951/2012. Thereafter, defendants purchased area of 0.06.87 R out of Gat No.1505 from Parashram Aaba Patil in the year 2012. Defendants are in possession of their respective shares by way of registered sale-deed. They have no concern to the share of plaintiffs, as they put wire fencing to their share. Defendants gave their share on rent basis to one school namely Gurudaulat English Medium School. Per contra plaintiffs are obstructing possession of defendants as, plaintiff's share is at eastern side of the compound of defendants. As there is compound for both plaintiff's and defendant's share therefore, there is no question arise for obstruction. Hence, prayed to reject the application.

Points & Findings :-

4. After going through the case of the plaintiff and defendants, following points arise for my consideration along with findings based on reasons,

Sr. No.	Points	Findings
1.	Whether prima facie case lies in favour of the plaintiffs ?	In the Affirmative.

Sr. No.	Points	Findings
2.	Whether balance of convenience lies in favour of the plaintiffs ?	In the Affirmative.
3.	Whether irreparable loss will be caused to the plaintiffs, if temporary injunction is not granted?	In the Affirmative.
4.	What order?	As per final order.

Arguments on behalf of the Plaintiffs :-

5. Learned advocate for the plaintiffs has argued that, the suit property is not joint family property or there is no joint possession of plaintiffs and defendants over the suit property. The plaintiffs and defendants have their independent shares. Defendants failed to file sale-deed of their share. There is no documentary evidence on record which shows share of the defendants. Defendants are obstructing possession of the plaintiffs by putting fences. Plaintiffs are in apprehension that the defendants will dispossess them. He further placed his reliance on, *Suhani Shivram Dhuri V/s. Maharashtra Housing and Area Development Authority, reported in 2007 (5) Mh.L.J. 250* and *Rame Gowda V/s. M. Varradappa Naidu and others, reported in 2004 SC 4609*. Therefore, the plaintiffs have proved prima facie case, balance of convenience lies in favour of plaintiffs and if temporary injunction is not granted then plaintiffs will suffer irreparable loss. Hence, prayed to allow the present application.

Arguments on behalf of the defendants :-

6. Learned advocate for the defendants argued that, suit property not properly mentioned. The obstruction not proved by the plaintiffs. Only one defendant is neighbour of the plaintiffs then

how all are obstructing possession of plaintiffs. The plaintiffs already filed an application for appointing court commission for measuring suit property, the same was allowed and awaiting report. Once the report came on record everything will be clear, but plaintiffs unnecessarily filed the present application. Fencing is already there, so no question arises of obstruction. Therefore, the prima facie case, balance of convenience not lies in favour of plaintiffs and if temporary injunction is granted then defendants will suffer irreparable loss. Hence, prayed to reject the present application.

REASONS

7. In a matter arising under Order 39, Rule 1 and 2, Code of Civil Procedure, three conditions are to be satisfied; that the applicant has a prima facie case; that in the event of not granting injunction he would be put to an irreparable loss and injury; and that the balance of convenience is in his favour. I have given thoughtful consideration to the arguments advanced by the learned advocate of the plaintiffs and defendants. Admittedly, while dealing with such applications, Court has to see in whose favour prima facie case lies. That means to say plaintiff has some legal right over the subject matter of dispute and intervention by the Court is needed in order to protect that right. Here, nature of injunction sought is of importance. The plaintiffs sought injunction against the defendants, restraining them from dispossessing the plaintiffs and restraining them from obstructing their peaceful possession over the suit property.
8. So far as possession of plaintiffs over the suit properties are concerned as per their contention, defendants are trying to dispossess them from their lawful possession. I have perused the

documents filed by the plaintiff i.e. sale-deed no.1237/2014, sale-deed No.4844/2006, 7/12 extracts of Gat No.1505, 8A extract, etc. Out of which the 7/12 extract of Gat No.1505 shows the name of plaintiffs, defendants and other sharers with their respective shares. There are other co-sharers in the Gat No.1505, but there is separate share mentioned before the name of other co-sharers. Also, perused the documents filed on record by the defendants, as certificate of school registration, letter of education department and photographs of suit property.

9. The learned advocate for the plaintiffs placed his reliance on ***Suhani Shivram Dhuri V/s. Maharashtra Housing and Area Development Authority, reported in 2007 (5) Mh.L.J. 250***, in this case Hon'ble Bombay High Court held that,

'A party who does not show a legal right under lawful authority then that party cannot get relief in court of law'.

Here in the present case, admittedly defendants not filed sale-deeds of their respective share but one thing is pertinent to note that, the 7/12 extract of Gat No.1505 bears names of all defendants.

10. Further, the learned advocate for the plaintiffs placed his reliance on, ***Rame Gowda V/s. M. Varradappa Naidu and Others, reported in 2004 SC 4609***, in this case Hon'ble Apex Court held that,

'Injunction restraining defendants from interfering with peaceful possession of plaintiff. Failure by either party to prove title and if plaintiff is in settled possession then it entitles him to protect his possession. In such cases grant of injunction is proper'.

11. Ordinarily, the co-sharers have equal right and interest in the whole property along with other co-sharers. Every owner has right of enjoyment and possession equal to that of the other co-sharers. If the acts of the co-sharer in possession are detrimental to the interest of other co-sharer, a co-sharer in possession can seek an injunction prevent such act which is detrimental to his interest.
12. On going through the present application, it transpires that plaintiff has claimed temporary injunction restraining defendants from dispossessing the plaintiffs and restraining them from obstructing their peaceful possession over the suit property. So far as injunction protecting possession of plaintiffs are concern as earlier mentioned possession over the suit property mentioned in para first, is with the plaintiffs. The defendants are also in possession of other area of Gat No.1505. The plaintiffs also admitted that, the defendants purchased some area of Gat No.1505. Where a co-sharer is in possession of separate parcels, consented to by the other co-sharer, it is not open to anyone to disturb the possession without the consent of others.
13. As regards the injunction about the dispossession and obstruction to plaintiff's peaceful possession is concerned, at this moment, if injunction is rejected, it would definitely cause some complications, in that case plaintiffs would suffer irreparable loss. Therefore, balance of convenience also lies in favor of plaintiffs. Admittedly, the report of court commission is yet not on record, but till then it is necessary to protect the possession of the plaintiffs. The findings of the instant application shall not affect the final decision of suit. Hence, point Nos.1 to 3 answered in the "**Affirmative**". In the result following order is passed.

ORDER

1. Application is allowed.
2. Defendants are restrained from dispossessing and obstructing the possession of the plaintiffs over the suit properties more particularly described in para first of the plaint till final decision of the suit or till further order.
3. Rest of the prayer of plaintiff is rejected.
4. Cost in cause.

Kolhapur.
Date – 07/10/2019

(P.R. Nikam)
11th Joint Civil Judge Jr. Division,
Kolhapur.