

**ORDER BELOW EXH.05**(Passed on 05th day of June, 2023)

By the instant application supported with an affidavit, plaintiffs have prayed for to issue temporary injunction restraining defendants from causing disturbance to their possession over the suit properties described in paragraph No.1 of the plaint pending the suit, in view of Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 (hereinafter it is referred to in short as “the Code”).

02. Read the instant application and say filed by defendant No.1 below Exh.23, which is also adopted by defendant Nos. 2 to 6 vide their pursis Exh.26, 31 and 33. Perused record and proceedings of the present suit. Heard the learned Advocates of the respective parties. I have also considered the submissions made under written notes of arguments filed on record by plaintiff’s below Exh.40.

03. As per the case of plaintiff their ancestral namely Anandrao Pingale leaving behind plaintiff and defendants his heirs and accordingly their ancestral properties situated at Mauje Dari, Taluka & District-Nashik were partitioned on 06/06/2011 in between them as per the order of Tahasildar in view of Section 85 of the Maharashtra Land Revenue Code, 1966 and acted upon. Accordingly, said partition were effected and their names were also mutated in rights of record on the basis of said partition. Plaintiff acquired properties namely Block No.120A/2 admeasuring area 0H 47R out of 2H 47R, Bloc No.120A/3 area 0H 10R out of 2H 47 R, Block No.12A/6 area 0H 10R out of 2H 47 R, Bloc No.37/7 area 0H 63R, Block No. 38/8 area 02H 05R out of area 02H 85R and Bloc No.23 area 0H 36R out of 02H 89R situated at Mauje Dari, Taluka & District Nashik (hereinafter it is referred to in short as “the suit properties”). Since, the plaintiffs are in the peaceful possession of the suit properties and they developed the same. Recently, defendants which no right in suit properties trying to disturb their possession and also tried to dispossess them therefrom. So, they issued legal notice dated 22/08/2022 to defendants and called upon them not to disturb their possession over the suit properties which they received but in vain. So, they constrained to institute present suit against defendants along with instant application for temporary injunction pending the suit. It is also contended by plaintiffs that they have prima facie

case in their favour and also balance of convenience and if they be denied the relief they may suffer irreparable loss which can not be compensated in terms of money. Thus, they have prayed for to issue temporarily injunction against defendants as prayed hereunder in the interest of justice.

04. On the other side, defendant Nos. 1 to 6 denied the contention and relief made hereunder. They contended that no legal partition took place between the plaintiffs and themselves on the document in writing and they are in possession of the ancestral properties which they peacefully cultivating the same. They also contended that the alleged partition order of Tahasildar is not effected as no measurement is carried out for putting the parties in possession of respective shares. They further contended that order of Tahasildar can only be effected after measurement of land done and thus it is not legally acted upon, despite plaintiffs taking undue advantages of their names in revenue record trying to obstruct their possession and thereby instituted present false suit with no merit. Thus, they have prayed for to reject the application with cost.

05. Defendant No.7 appeared but failed to file on record his reply and therefore, the instant application is proceeded without his reply/say by order passed below Exh.01 on 27/03/2023.

06. Upon hearing the parties and perusal of record, following points arise for my determination against which I have recorded my findings with reason as follows:-

No.	Points	Findings
1	Does plaintiffs prove that they have prima facie case in their favour?	In affirmative
2	Does plaintiffs also prove that they have balance of convenience in their favour ?	In affirmative
3	Does plaintiffs further prove that they suffer irreparable loss, if temporary injunction is refused.	In affirmative
4	What Order?	As per final Order.

REASON

As to Point No.01:-

07. It is the specific case of plaintiff that they have been in the possession of the suit properties being acquired under partition and their names recorded in revenue documents on the basis of order of Tahasildar made but, defendant with no

reason trying to cause obstruction to their possession over the suit properties. Defendants denied the actual possession of plaintiff over the suit properties and contended their own possession as partition in question is yet not effected.

08. It is settled while deciding the application for temporary injunction made under the provisions of Order XXXIX Rule 1 & 2 of the Code that plaintiffs have to show prima facie case in their favour on the basis of material on record and balance of convenience is also lie in their favour and if injunction they prayed is refused they may suffer irreparable loss it cannot be compensated in terms of money.

09. While searching the prima facie case, I would like to carefully gone through the material available on record. Plaintiffs allegeding their possession over the suit properties and contended obstruction of defendants thereto and thereby they seek for injunction pending the suit restraining them from causing disturbing to their possession. In support of this contention, plaintiffs filed on record documents below list Exh.03.

10. A perusal of documents filed below Exh.03, it appears that they are 7/12 extract of the suit properties and 8A extract in names of plaintiffs showing holding of the suit properties along with mutation entries made in revenue record on the basis of one order passed by Tahasilder on 08/08/2011. These documents below list Exh.03 are revenue records carries the presumption of its correctness unless entries made therein rebutted. These revenue record clearly spelled out names of plaintiffs being possessors and cultivators of subject properties. There is noting on record to disbelieve the entries made in revenue record filed below list Exh.03 except the contention of defendants that they are in actual possession of said properties. Despite, said contention made in reply by defendants, there is no material on record made available for rebutting the entries made in revenue record which showing the names of plaintiffs being possessor and cultivator thereof. As such, mere contention of defendants of actual possessor with no material on record, the revenue entries made in favour of plaintiffs holds water which prima facie substantiating the contention of plaintiffs in respect to their possession over the suit properties.

11. From the material on record and appreciating the submissions of the parties, it is clear enough to hold that plaintiffs are in the possession of suit properties and their possession also reflects in revenue record which questioned by defendants as

yet not effected but appeared to fail to raise challenged to said documents effected and acted upon in year 2011 as shown from the revenue documents at serial No.2 & 3 of the list Exh.03. Thus, I have no hesitation to prima facie hold the case of plaintiffs that they have been in possession of the suit properties which is supported by revenue documents.

12. As per the documents filed below list Exh.03 particularly documents at serial No.4 & 5 shown the grievance of plaintiffs by which they called upon defendants by notice not to cause disturbance to their possession over the suit properties along with contention of their earlier attempt. These documents are in consonance with the pleading of plaintiffs in respect to apprehension of dispossession at the hands of defendants. Thus, the plaintiffs have prima facie shown their apprehension with reasonable material in respect to causing disturbance of their possession over the suit properties at the hands of defendants and their need to restrain them from doing so in future.

13. In view of the matter, plaintiffs have prima facie proved their case as discussed above and also balance of convenience lies in their favour and if, in these peculiar circumstances, plaintiffs refused temporary injunction as prayed hereunder, they may definitely be suffered irreparable loss which cannot be compensated in terms of money. Thus, I answer point No. 1 to 3 in affirmatives and in answer to point No.4, I pass the following order:-

ORDER

1. The application (Exh.05) is hereby allowed.
2. Defendants are hereby restrained, by issuance of temporary injunction, from causing disturbance to the possession of plaintiffs over the suit properties described in paragraph No. 1 of the plaint, pending the suit.
3. Cost in cause.
4. Both the parties to note.

Date:- 05/06/2023
Nashik.

(K. K. Chafale)
2nd Jt. Civil Judge (Junior Division)
Nashik.