

MHKO100011522021

**ORDER BELOW EXH. 5.**

This is an application under Order XXXIX Rule 1, 2 of the code of civil procedure, for the grant of temporary injunction restraining defendants from raising any type of loan against the suit land and obstructing the plaintiffs possession over the suit land.

2. Land Gat no. 399 admeasuring 4 Hector 39 R of village Sambare is the subject matter of this suit. Read the plaint and application Exh.5. Perused the record. Defendant no. 1 to 3 have appeared in this suit but failed to file their written statement and say on Exh.5. Hence, application is proceeded without say of defendants. Hence, contents of the application need not be reiterated.

3. Following points have arisen for my consideration and I have given findings thereon for the reasons stated thereunder :-

Sr No	Points	Findings
1	Whether the plaintiff has made out prima facie case?	Yes
2	Whether the balance of convenience lies in favor of the plaintiff ?	Yes
3	Whether the plaintiff will suffer irreparable loss, if T.I is not granted ?	Yes
4	What order?	The application is Allowed.

REASONS FOR FINDINGS

4. I have heard Shri. S.S.Khot for the plaintiff and perused the documents viz. judgment in RTS/66/1996, sketch map gat no. 399, decision of Avvar Tahsildar in 32G proceeding no. 74/1994, agreement dtd. 23/03/1995, agreement/receipt issued by Pratap Narayan Shinde, agreement dtd. 06/05/1989, agreement dtd. 06/05/1984, extract of khata no. 170A, M.E.No. 792, three extracts of survey no. 54/1, 7/12 extract of gat no. 399, M.E.No. 603, 643 & copy of order passed below Exh. 5 in RCS No. 03/1996 etc.

AS TO POINT NOS 1 to 3

5. In order to avoid repetition of discussion all the points are considered under one head. As mentioned above, defendants have not challenged the averments of the application. It reveals from the application that the suit land was initially belonging to Narayanrao Nilkantrao Shinde, who was Inamdar and owner of Thousand Acre of land. Said Narayan was grand father of defendant. However, plaintiffs grand father namely Vithu Rau Patil was cultivating the land and was in continues possession as a lawful tenant. After his demise plaintiffs father namely Kallu alias Kallappa continued cultivation of the land of the same terms and conditions. Thus, tenants had acquired status of deemed purchaser as on 01/04/1957 but proceeding u/s. 32G had not commenced. Thereafter, 32G proceeding was initiated at that time father of defendant was absent, so his three brothers amicably settled purchase price of their 3/4th share out of the suit land. Accordingly, in number/ 32G/Sambhare/74/94 order was passed in respect to 3/4th joint share of the suit land. Accordingly certificate of 32M was issued on

07/06/1995 in the name of plaintiffs father. Entries were accordingly made to the revenue record. As also, remaining 1/4th share out of the suit land was continued in the name of plaintiffs father as a tenant. Thus suit land is in continues possession of the plaintiff and their predecessor. The plaintiff has produce above documentary evidence which extent corroboration to the averments made in the application. Similarly, it reveals from the order passed below Exh.5 in RCS No. 03/1996 that the predecessor has considered all the documents and prima facie hold that the plaintiff Kallappa (who was the predecessor of the plaintiff) is in possession of the land. Thus, it transpires from the said order and documents on record that suit land is in possession of the plaintiff since long as pleaded by him. Defendants have not filed the written statement and claimed any title and possession over the suit land. Similarly, they have not challenged averment regarding alleged obstruction dtd. 02/11/2021. Therefore, it clearly reveals that, defendants are trying to obstruct the plaintiff by making efforts of trespass on the suit land. The plaintiff has thus shown prima facie case. Similarly, considering the document and nature of the litigation it appears that, balance of convenience tilts in favour of the plaintiff. If the long standing possession of the plaintiff is obstructed by the defendants then it will cause irreparable loss to the plaintiff. Hence, it is necessary to pass an order of injunction to restrain the defendants from causing any obstruction to the plaintiffs possession over the suit land. Ultimately, point No.1 to 3 are answered in the affirmative.

POINT NO.4

6. In view of positive finding on point no. 1 to 3, I pass the following order.

ORDER

- 1) Application is partly allowed.
- 2) Defendant no. 1 to 3 are hereby restrained from causing any obstruction to the plaintiffs possession over the suit land till the decision of this suit.
- 2) C.O.A

Order dictated and pronounced in open Court.)

Gadhinglaj.
Date : 29/06/2022

(M. T. Kharade)
Jt. Civil Judge Jr. Dn.,Gadhinglaj