

**Order below Exh.5 in Special Civil Suit No.24/2018**

(C.N.R. No. MHAH05-000684-2018)

This is an application for seeking relief of temporary injunction.

2. The subject matter of this suit and application is an agricultural land admeasuring 9 Acre 25 Gunthas i.e. half land out of Old Book No.21/1 New Survey No.21/1 totally admeasuring 30 Bighas i.e. 19 Acre 10 Gunthas, situated at village Eklehere Tal.Shrirampur, Dist.Ahmednagar. This property is more particularly described in para No.1 of this application, which is henceforth called as 'Suit Property'.

3. In short, the contention of the plaintiffs is that, the suit property was originally belonging and possessed by Chandsaheb Chotesaheb Jahagirdar. The plaintiffs are the only legal heirs of the suit property. Their predecessor i.e. Chandsaheb had leased out his ancestral land bearing Book No.21/1 admeasuring 30 Bigas to the Maharashtra Sugar Mills Ltd. for a period of 20 years. Accordingly, a registered lease-deed bearing No.179 was executed on 25.04.1939. After survey, this land was calculated as 19 Acres 12 Gunthas. Thereafter, on 15.03.1948, the lessor sold the half of the land to one of the owners of Maharashtra Sugar Mills Ltd. i.e. Mr. Shantaram Mahadev Dahanukar. Thereafter, the rest of the land remained in possession of Maharashtra Sugar Mills.

Thereafter, on 25.04.1959, the lease-deed has been expired. As per their further contention, in the year 1962, upon enforcement of Maharashtra Agricultural Land (Ceiling on Holding) Act, on 15.03.1963 the lands hold by Maharashtra Sugar Mills Ltd. were hold by it as per the provisions of the said Act. The lands beyond the extent of 18 Acres of Maharashtra Sugar Mills were declared as surplus lands and were vested into the Government free from all encumbrances. The Mutation Entry Nos.207 & 668 were published and brought into effect in the year 1963 and 1980 respectively. The ancestors of plaintiffs were dispossessed from the land bearing Book No.21/1 on 15.03.1963. The first survey was conducted in the year 1957 and the lands were measured as Acres and Gunthas. The effect of that survey took place on 25.05.1963, after the lands were already vested in the Government on 15.03.1963. Though, the lands were vested in Government, the revenue entries like succession came to be mutated and after the death of Chandsaheb, the names of his heirs i.e. Nawabsaheb, Burhansaheb and Zubedabi were mutated to New Survey No.21/1 by Mutation Entry No.397 dated 10.09.1975. In the meanwhile, the Government formed and establishment namely Maharashtra State Farming Corporation and handed over the lands to it for cultivation and management. Said Corporation took all future responsibilities of paying rent, damages and compensation to the ex-lessors. As by virtue of Mutation Entry Nos.207 & 668,

this land was vested in Government as surplus land, the plaintiffs had no option to raise any complaint. Thereafter, in the year 2000, the Government brought amendment to the said Act and ex-lessors were enabled to get the lands up to ceiling limit of 18 Acres per family. Thereafter, after a long legal battle, the Government started to return back the lands to ex-lessors as per guidelines dated 04.05.2012. Accordingly, the plaintiffs applied to the committee appointed for such restoration of lands. The original ex-lessors had other lands too in his name, whose lease-deeds were renewed in the year 1955 along with suit property. However, the said committee preferred only to consider the other land parcels which were renewed by lease-deed in the year 1955, but shown its disinterest in respect of the suit property as its lease-deed was expired in the year 1959. Accordingly, the successors of ex- lessor approached Hon'ble High Court. Accordingly, Hon'ble High Court by its order issued directions to the said committee to decide the matter within 3 months. However, the said committee did nothing. Accordingly, the contempt proceedings were initiated. Thereafter, the said committee started scrutiny of the matter and came to the conclusion that, the land was vested in State Farming Corporation, land admeasuring 9 Acre 25 Gunthas belonged to ex-lessor Chandsaheb, the land was declared as surplus land as its lease-deed was expired in the year 1959, the possession of Maharashtra Sugar Mills was illegal and other conclusions.

Even though, such a thorough report of the said committee was available on record, the State Government and State Farming Corporation did not respect the same. Even, no compensation or rent has been paid to the plaintiffs in respect of the suit property since 15.03.1963. Now, the plaintiffs are entitled to receive the entire amount as well as actual possession of the land. However, even after requests made by them to the defendants, the defendants have refused to pay the arrears and even to handover the possession of the suit property. On these counts, by contending that, the *prima-facie* case and balance of convenience lies in their favour, they have prayed for restraining the defendants from creating any sort of third party interest in the suit property, by way of order of temporary injunction.

4. The defendant No.1 by filing its common say and written statement at Exh.35, resisted the application. As per its contention, the suit itself is not maintainable. The plaintiffs have not raised any objection when the suit property was transferred in the possession of defendant No.2. The suit property was never in possession of it. Accordingly, it has prayed for rejection of the application.

5. The defendant No.2 by filing its common say and written statement at Exh.37 resisted the application. As per its contention, the ancestor of the plaintiffs i.e. Chandsaheb

was not the ex-lessor. Since year 1965, the suit property is possessed by it as an owner. Therefore, the claim of the plaintiffs is barred by limitation. It has further contended that, the land out of Survey No.21/1 admeasuring 30 Bigas i.e. 19 Acre 12 Gunthas was given by Chandsaheb Jahagirdar on lease to Maharashtra Sugar Mills for a period of 20 years, by virtue of lease-deed dated 23.04.1934. In the meantime, said Chandsaheb sold 15 Bigas i.e. 9 Acre 25 Gunthas land out of this property to Shantaram Mahadev Dahanukar by virtue of registered sale-deed dated 18.02.1947. So also, remaining 9 Acre 34 Gunthas Western side portion out of Survey No.21/1 was sold by Chandsaheb to the Shantaram Mahadev Dahanukar through General Power of Attorney Govind Ganesh Chitale by virtue of registered sale-deed dated 15.03.1948. As such, the plaintiffs are having no concern with the said 9 Acre 25 Gunthas land. From these two sale-deeds, it becomes clear that, said Chandsaheb sold his entire land out of Survey No.21/1 and nothing was remained with him in that survey number. However, this fact is suppressed by the plaintiffs. As such, the plaintiffs are having no concern with the suit property. Even, when the surplus land were vested in it by the Government, the entire land out of Survey No.21/1 was included therein. As such, the Maharashtra Sugar Mills was a necessary party to this suit. However, as it is not impleaded, the suit is bad for non-joinder of necessary party. It has further contended that, on the basis of sale-deeds

executed by Chandsaheb, the name of said Shantaram Mahadev Dahanukar i.e. Maharashtra Sugar Mills came to be recorded in the revenue record of Survey No.21/1. It has further contended that, due to oversight, some mistake was committed in the survey number in the revenue record and the plaintiffs are intending to take disadvantage of the same. On these counts, by contending that, the suit itself is not maintainable and neither the *prima-facie* case nor the balance of convenience lies in favour of plaintiffs, it has prayed for rejection of the application.

6. On the basis of these rival contentions of the parties, following points arise for determination to which findings are recorded follow by reasons there under.

<u>No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether the <i>prima-facie</i> case lies in favour of plaintiffs ?	No.
2	Whether the balance of convenience lies in favour of the plaintiffs ?	No.
3	Whether the plaintiffs would suffer irreparable loss or injury, in the event if, the injunction order would be refused ?	No.
4	What order ?	As per final order

### REASONS

#### As to Points No. 1 to 3 :-

7. In support of their claim, at this juncture, the plaintiffs have placed on record various documents along with list Exh.3. On the other hand, at this juncture, the defendant No.2 has placed on record documents along with list Exh.31.

8. Heard learned advocate Shri.T.K. Choudante for the plaintiffs, learned APP for defendant No.1 and learned Advocate Shri.S.R. Shelke for defendant No.2.

9. The learned advocate of plaintiffs submitted that, the common ancestor of the plaintiffs i.e. Chandsaheb was the original owner and possessor of the suit property. As per his contention, in the year 1939, said Chandsaheb given suit property to Maharashtra Sugar Mills on lease for a period of 20 years. As per his contention, in the year 1948, only the half portion was sold by said Chandsaheb to one Shantaram Dahanukar. As per his further contention, in the year 1959, the lease was expired. He has further contended that, thereafter in the year 1962, the Ceiling Act was enacted and in the year 1963, the lands were taken by the Government, which were subsequently given to State Farming Corporation. He has further contended that, the plaintiffs being the successors of Chandsaheb, in the year 2012, demanded the restoration of the suit property. However, the defendants

refused for the same. As per his further contention, the plaintiffs, therefore, approached Hon'ble High Court, who directed the defendants to conduct inquiry and take a decision. He has further contended that, accordingly, the committee was formed, of which defendant No.2 was also a member. He has further contended that, the report submitted by the said committee and its opinion is definitely in favour of the plaintiffs. He has further contended that, though the defendant No.2 was the member of said committee it has not raised any objection before that committee. As per his contention, as such, the plaintiffs are entitled to get the suit property restored being successors of Chandsaheb. As per his contention, though the defendant No.2 has placed on record the two sale-deeds, the sale-deed in respect of the suit property is not acted upon and therefore, the rights of the plaintiffs in respect of the suit property are intact. Accordingly, he has prayed for allowing the application.

10. On the other hand, the learned advocates of the defendants submitted that, though the plaintiffs are contending that, the suit property i.e. the remaining property out of survey No.21/1, belongs to them, there is no substance in their contention. As per their contention, the predecessor of the plaintiffs executed two distinct registered sale-deeds in respect of the entire property out of Survey No.21/1. As per their contention, both the registered sale-deeds are placed on

record and perusal of these documents would show that, after execution of these sale-deeds, nothing remained with Chandsaheb out of this survey number. They have further contended that, the entire documentary evidence placed on record clearly shows that, there is no substance in the contention of the plaintiffs about their alleged rights in respect of the suit property. As per their contention, merely because, the said committee has submitted its report on the basis of wrong information, the plaintiffs would not get any right created in their favour. They have further contended that, after the year 1948, the plaintiffs or their predecessors are having no concern with the suit property. On these counts, they have prayed for rejection of the application.

11. In this background at the outset, a glance towards the documents along with list Exh.3 shows that, the lease-deed in respect of 30 Bigas land out of Survey No.21/1 was executed by Chandsaheb Jahagirdar in favour of Maharashtra Sugar Mills on 25.04.1939. Further perusal of the Mutation Entries placed on record by the plaintiffs show that, after the survey, the area was converted from Bigas to Acre Gunthas.

12. So also, perusal of the documents placed on record by the defendant No.2 along with list Exh.31 shows that, the defendant No.2 has filed copies of two sale-deeds dated 18.02.1947 and 15.03.1948 respectively. Perusal of both

these documents categorically show that, said Chandsaheb sold 15 Bigas land out of Survey No.21/1 to Shantaram Mahadev Dahanukar on 18.02.1947. It is also significant to note that, the recitals of this sale-deed categorically shows that, the property under sale by this document was given on lease to Maharashtra Sugar Mills on 25.04.1939 and the right of receiving its rent was transferred to the purchaser.

13. Further perusal of the sale-deed dated 15.03.1948 also shows that, this sale-deed was executed by Chandsaheb in respect of 17 Bigas i.e. 9 Acre 34 Gunthas land out of Survey No.21/1 in favour of Shantaram Dahanukar. It is also significant to note that, the recitals of this sale-deed also shows that, the property under sale was given on lease to Maharashtra Sugar Mills and the right of receiveing rent was transferred by this document.

14. Both these sale-deeds categorically shows that, the entire land out of Survey No.21/1 was transferred by Chandsaheb in the year 1947 and 1948 itself. It is also significant to note that, though the lease-deed of this land was executed in favour of Maharashtra Sugar Mills in the year 1939, these documents categorically reflects that, the right of receiving rent and consequently possession of the leased property was transferred by said Chandsaheb.

15. This *prima-facie* circumstance appearing from these documents of sale-deeds show that, the predecessor of plaintiffs transferred all his rights in respect of the property out of Survey No.21/1. Apart from this, perusal of the 7x12 extracts placed on record by the defendant No.2 categorically shows that, since year 1965-66 till the year 2013-14, the entire property out of Survey No.21/1 is under the possession and cultivation of defendant No.2. More so, at this juncture, the plaintiffs have placed no document on record to show their possession at any time after the execution of the sale-deeds by Chandsaheb i.e. since year 1948.

16. No doubt, the plaintiffs have placed on record the report submitted by the committee formed as per the direction of Hon'ble High Court. It is also significant to note that, the said committee, in its report, has opined that, there should be no objection to return the 15 Bigas i.e. 9 Acre 25 Gunthas land out of Survey No.21/1 to the successors of ex- lessor. However, this report of the committee can not be said to be a document of title and therefore, *prima-facie* it appears that, on the basis of mere such report, no right can be vested in the plaintiffs or anybody else.

17. Rather, the *prima-facie* documentary evidence placed on record and more particularly the sale-deeds placed on record by the defendant No.2, it appears that, the entire land out of

Survey No.21/1 was transferred by the predecessor of plaintiffs Chandsaheb in the year 1948 itself. At this juncture, it is also essential to mention here that, though the learned advocate of the plaintiffs tried to contend that, the sale-deed in respect of the suit property was not acted upon, his this contention can not be taken into consideration at this juncture. Whether that sale-deed was acted upon or not can only be determined after the full-fledged trial and after the parties adduce their evidence.

18. In such circumstances, at this juncture, *prima-facie* it appears that, after the execution of sale-deeds in the year 1947 and 1948, there appears no concern of the plaintiffs with the suit property. Therefore, neither the *prima-facie* case nor the balance of convenience lies in favour of plaintiffs nor their appears any irreparable loss or injury to them in the event of refusal of order of injunction. Accordingly, the points under determination are answered in the negative and following order is passed.

**ORDER**

1. The application stands rejected.
2. Costs in main cause.

Date. 15/10/2019.

( D.P. Kasat )  
Civil Judge, Senior Division  
Shrirampur.