

Order below Ex. 5
R.C.S. No. 29 of 2013

1 Plaintiffs have filed this application Ex.5 through their power of attorney under Order 39 Rule 1 and 2 of Civil Procedure Code for grant of temporary injunction i.e. not to construct any sort of construction.

2 Description and 4 boundaries of suit property situated in Nannaj village Tal : Jamkhed District : Ahmednagar are as under:-

Gat number	Area H. R.	Assessment Rs. Ps.	East	South	West	North
319	5-31	6-73	303	293	331	316, 311, 310 and others.

3 According to plaintiffs, suit property Gat No.319 is their ancestral property arrived from their forefathers, but, defendants in November 2012 illegally made construction on the suit property by encroachment without permission of plaintiffs and as per plaint map, defendant No.1 constructed 20 x 39 ft space. Defendant No.2 constructed room of 15 tin sheet and defendant No.3 constructed room of 14 tin sheet. Therefore, this application.

4 Defendants No.1 to 3 filed written statement as well as say to the application Ex.5 at Ex.21 and contend that 4 boundaries of suit properties are incorrect. Plaintiff map is wrong. 7x12 extract is wrong. Plaintiffs suppressed material fact. Original survey number of suit property was 222 and belongs to Malku, Ambu and Pandu. They mortgaged suit property to Babu Dhondiba Mali and Dharma Sakharam Mali in the year 1869 at Rs.81/- and thereafter, in the consolidation scheme, original survey number 222 converted into Gat Number 319 and 331 and both Gat numbers are adjoining to each other.

5 According to defendants, Babu Dhondiba Mali has 3 sons and they became owners and their legal heir was Shankar Hariba Molkar who is father of defendant No.3. Therefore, suit property is self acquired property of father of defendant No.3.

6 According to defendants, in the consolidation scheme of Gat number 319 wrong record is created because, there are residential houses in the suit property and in Grampanchayat record, there is mention Urhe-Vasti i.e. residential houses and in 7x12 extract in Gat number 331 in Gat No. 319 the entry mentioned Vasti-Pad i.e. barren land, but, inadvertently, Vasti_pad entry remained to be mentioned in 7x12 extract of suit property.

7 Defendants No.1 and 2 had purchased Gavthan Urhe_vasti place 150 ft

x 22.5 ft on 13-04-1970 from Dharma Sakharam Mali at Rs.100/- and constructed houses thereon and possessed suit property.

8 According to defendants, defendant No.1 had constructed building admeasuring 20 x 37 ft and defendant No.2 possessed Wada i.e. cattle shed because, suit property is under Gaothan Grampanchayat jurisdiction. Defendants are owners and possessors of suit property since year 1975. Said fact is suppressed by plaintiffs.

9 Plaintiffs filed and relied affidavits and 7x12 extract of suit property of Gat number 319 at Ex.8 and map of survey number 222 at Ex.41, 4 boundaries of suit property given by Talathi, 7x12 extract of Gat Number .331 at Ex. 42 and extract of consolidation scheme at Ex. 43.

10 Defendants relied upon the documentary evidence with list Ex. 27 i.e. sale deed dated 13-04-1970 in favour of predecessor of defendants, Hakka Patra of survey number 222, form No.1 of survey number 222/1 Grampanchayat map of Gat number 319, voters list of Nannaj village, 7x12 extract at Ex. 31 and 32 of survey number 222, Grampanchayat map of Urhewadi Nannaj village and property extract at Ex.34 to 37 of Urhe_vasti.

11 Ld. counsel of plaintiffs Shri. H.T. Kashid in the argument submitted that the documents which are filed by defendants are not belonging to Nannaj village. The

documents filed by defendants are going to show that their forefathers purchased open plot in survey number 222(1). Therefore, the sale deed in favour of forefathers of defendants is vague. Survey number 222/1 is converted into Gat number 331 which belongs to defendants in consolidation scheme. Survey number 222(2) as well as Survey number 222(7) converted into Gat number 319 in consolidation scheme and Gat number 331 is for Gaothan i.e. Vasti-pad admeasuring only 90 Are area and therefore, defendants have no concern with suit property i.e. Gat number 319.

12 Counsel for defendants No.1 and 2 Shri. V.A. Patil in the argument submitted that defendants filed 7x12 extracts of both properties i.e. of Gat number 331 as well as Gat number 319 and in both 7x12 extracts, there is shown Urhe-Vasti i.e. Vasti-Pad it means residential houses and as per 7x12 extract, defendants purchased open plot and constructed house and reside there since year 1970.

13 Following points arise for my determination and I have recorded my findings against them for the reasons given below:-

POINTS**FINDINGS**

- | | | |
|---|--|-------------|
| 1 | Do plaintiffs prove prima facie case? | No. |
| 2 | Does balance of convenience lie in favour of plaintiffs? | No. |
| 3 | Who will suffer irreparable loss if temporary injunction is granted? | Defendants. |

4 Are plaintiffs entitled for temporary injunction?

No.

5 What order?

As per final order.

REASONS

AS TO POINTS NO.1 AND 2:-

14 After considering documentary evidence of plaintiffs and defendants, it is appeared that documents filed by defendants carry much weightage rather than the documents of plaintiffs because, in 7x12 extract at Ex. 8 of suit property, filed by plaintiffs, no doubt, there is name of plaintiffs No.1 and 2 in the possessor's column, but, said 7x12 extract is of the year 2007/08 and plaintiffs name not mentioned in the cultivators column.

15 Documents filed by defendants are going to show that Dharma Sakharam Molkar had sold 150 ft x 22.5 ft open plot at Rs.100/- to Vitthal Eknath Moholkar. It is further appeared by documents of defendants that original survey number was 222 belonged to Malku, Ambu and Pandu and they sold 11 Acre 38 gunthe to Babu Dhondiba Mali and Dharma Sakharam Mali at Rs.81/- in the year 1869 and thereafter in the consolidation scheme 2 gat Numbers are created i.e. Gat number 319 and Gat number 331. Both are adjoining to each other and entry by revenue officer mentioned in 7x12 extract of Gat number 331 Vasti-Pad i.e. Gaothan means residential houses known Urhe-Vasti, but, inadvertently revenue entry remained to be made in 7x12 extract of Gat

number 319. Therefore, I hold that the record of Gat number 319 i.e. suit property is prepared inadvertently. Therefore, I recorded findings of points No.1 and 2 in the negative.

AS TO POINTS NO.3 AND 4:-

16 Further documents of defendants go to show that father of defendants No.1 and 2 had purchased their plot in the year 1970. Since then, defendants possess their houses because, Gat number 319 is situated in Grampanchayat jurisdiction. Persons from brotherhood of plaintiffs also resided in suit property. There is Savata Mali temple as well as Maroti temple in the jurisdiction of Grampanchayat. They also taken bore well for water connection. They also taken electricity connection in their houses and became owners of the plot from the life time of their forefathers. Therefore, I hold that if temporary injunction is granted in favour of plaintiffs, then, defendants will suffer irreparable loss. Hence, I recorded findings of points No.3 and 4 accordingly and proceed to pass the following order:-

ORDER

1 Application of Ex. 5 of plaintiffs is hereby rejected.

2 Costs in cause.

Civil Court, Jamkhed))
Date: 01-01-2014))

(A.S.Wadile)
Civil Judge, J.D. Jamkhed.

