



COMMON ORDER BELOW EXH.5, 52 & 65 IN

R.C.S. NO.437/2020

(CNR : MHAH2500 1352 2020)

This is an application filed by plaintiffs for seeking interim injunction under Order XXXIX Rule 1 & 2 of Code of Civil Procedure. In order to ensure brevity, pleadings & supportive evidence is discussed simultaneously.

2. **Description of property :-**

Property	Admeasuring Area	Village
Gat No.306	02H 20R	Chombhut, Tal. Parner

Above mentioned property is hereinafter referred as 'suit property' (while deciding the application the parties are referred as their original position in suit.)

3. **Plaintiff's case in short :-**

The suit is filed for permanent injunction. Defendant no. 1 and 2 are sons and defendant No.6 to 8 are the daughters of defendant No.3. Defendant No.4 is one of legal heir of Ravji Dere. During the pendency of suit, defendant No.5 was died. The suit property was ancestral property of defendants and other legal heirs of common ancestor Ravji Dere. The daughter of Ravji Dere namely Kalavti Auti had filed RCS No.31/1987 for partition of ancestral properties of Ravji Dere. In that suit the suit property was also included and defendant no.1 to 3 were party to the suit. The RCS No.31/1987 is decreed in 1995 and R.D No.50/1995 is filed for the execution of decree passed in RCS No.31/1987. In the R.D. No.50/1995 the parties in the suit

are entered into compromise and ancestral properties were divided by mets and bounds. In the compromise suit property were given to defendant no.1 to 3.

4. Then in 2002, plaintiff No.2 had purchased suit property by way of sale-deed No.919/2002 for consideration of Rs.4,50,000/- from defendant No.1 & 2. At that time, possession was also handover to plaintiff No.2. The name of plaintiff No.2 is entered in the ownership column by mutation entry No.830. Since 2002 to 2008 plaintiff no.2 was in possession of suit property. Plaintiff No.2 has borrowed loan of Rs.10,00,000/- on suit property. So, in 2008, plaintiff No.2 decided to sale the suit property and sold the suit property to plaintiff No.1 by way of sale-deed No.2078/2008 for the consideration of Rs.8,05,000/-. At time also plaintiff No.2 had handed over possession of suit property to plaintiff No.1.

5. Then name of plaintiff No.1 is mutated by mutation entry No.1224. Sub-divisional Officer, Ahmednagar cancelled the mutation entry No.1224 and given direction to proceed as per R.D. No.50/1995 & 55/2009. Then plaintiff No.1 filed appeal against that order which is pending. Since 2008, plaintiff no.1 is in possession and cultivation of suit property. Many times defendants tried to obstruct the possession of plaintiff no.1. But in the year 2020, plaintiff no.1 has cultivated the crop of sugarcane in the suit property. defendant tried to obstruct the lawful possession of plaintiff over suit property.

6. Plaintiffs have *prima-facie* case, balance of

convenience is lies in favour of plaintiffs. If injunction is not granted then plaintiff no.1 became dispossessed from suit property. It cause irreparable loss to plaintiffs. So plaintiff prayed to grant temporary injunction against the defendants no. 1 and 2 till disposal of suit.

Say of defendant No.1 & 2 (Exh.12) :

7. Defendants submitted that suit property is ancestral property of defendants and other legal heirs. RCS No.31/1987 was filed for the partition of the ancestral property along with the present suit property. RD No.50/1995 is filed for the execution of decree passed in RCS No.31/1987 which is pending for the possession. These defendants also filed RD No.55/2009 for the execution of the decree in respect of the same ancestral properties. The Civil proceedings RCS No.97/2009, 205/2009 & 207/2009 along with R.D. No.55/2009 & 50/1995 are pending regarding suit property.

8. Till today, suit property and all the ancestral properties of defendants are joint Hindu family properties. Partition is not effected by metes and bounds. Hence, in such situation, possession of suit property cannot be handover. The execution of decree in RCS No.31/1987 is still pending. So property could not alienate, sale or transfer. In 2002, defendant No.1 & 2 were in need of money, so they approached to person namely Gajanan Auti who is the husband of plaintiff No.2. Gajanan Auti had given money to the defendant No.1 & 2 and taken their signatures on false paper and executed the sale-deed

no. 919/2002 instead of mortgage deed in respect of the suit property. This defendant had never handed over the possession to the plaintiff No.2. Hence, no question to handover possession to plaintiff No.1.

9. Though as effect of sale-deed No.2087/2008 the mutation entry No.1224 was recorded after the order of Tahsildar but, Sub-divisional Officer has revised the order of Tahsildar and cancel the mutation entry No.1224 and given direction to proceed as per R.D. No.55/2009 & R.D. No.50/1995. So name of plaintiff No.1 is not entered into ownership of suit property. On contrary, name of the defendant and other heirs recorded by way of mutation entry No.1286 in column of other rights. The crop survey entry 2008 is in the name of defendant no.1 and 2.

10. Today, defendant No.1 & 2 are in possession and in cultivation of suit property. No partition has been effected between defendants and other legal heirs. So defendant No.1 & 2 had no right to sale the suit property. Darkhast proceedings are pending. Defendant had cultivate sugar and onion crop in suit property. They had electric connection in suit property.

11. Application is not maintainable. Plaintiffs are Suppressed many material facts. No cause of action to file the suit. plaintiff No.1 has no title and possession. Plaintiff no.2 has no *locus-standi* to file the suit. So plaintiff has no *prima-facie* case. Balance of convenience lies in favour of present defendants. The present plaintiff has caused the obstruction to

the lawful possession of the defendants over the suit property. So prayed for rejection of application.

Injunction application of Defendant no.1 & 2 in Counter claim (Exh.52)

12. Defendant no. 1 and 2 filed counter claim and filed this application under Order 39 Rule 3 of the Code of Civil Procedure.

13. Defendant No.1 & 2 submitted that the suit property is ancestral property of the and defendants and other legal heirs. The RCS No.31/1987 was filed for the partition of the ancestral property along with the present suit property. RD No.50/1995 is filed for the execution of decree passed in RCS No.31/1987 which is pending for the possession. In the 7/12 extract, name of the father of the defendants and other legal heirs are recorded in the column of other rights. Defendant No.1 & 2 have filed RTS Appeal No.50/2013 against mutation entry No.1224. Then on 26.11.2015, Sub-divisional Officer has revised the order of Tahsildar and canceled the mutation entry no.1224. Sub-divisional Officer given direction to proceed as per R.D. No.55/2009 & R.D. No.50/1995. So name of plaintiff No.1 is not entered into 7/12 extract as owner. Name of the defendant and other heirs also entered by way of mutation entry No.1286 in column of other rights.

14. R.D. No.55/2009 is filed for the execution of same properties and still pending. The suit property is ancestral property of defendants and they were and are in possession and cultivation of suit property. This defendants has never handover

the possession of the suit property to the defendant. Today, the plaintiff has cultivated the crops of sugarcane and onion in the suit property. This plaintiffs are trying to obstruct the possession and cultivation of the defendants over the suit property. This plaintiff No.1 has falsely obtained the certificate from the Kranti Sugar Factory, Devi-Bhoyre. Plaintiffs are in collusion with each other and by taking undue advantage of revenue entries voluntarily obstruct the possession of the defendents by using criminal force. So this defendants has filed criminal litigation and also give the application to the Collector. Actually, plaintiff No.1 & 2 could not get the possession because till partition is not effected by mets and bounds. So third person cannot get the possession of the suit property. This suit property bears original survey No.175 which is allotted by the Government to the common ancestor of the defendants. So defendants cannot sold the property.

15. Plaintiff has *prima-facie* case. Balance of convenience is lie in favour of plaintiff. If the injunction is not granted, then irreparable loss caused to the plaintiff. So plaintiff prayed for temporary injunction against defendants.

Say of the plaintiffs to injunction application of defendant no.1 & 2 (Exh.46) :

16. Plaintiffs are submitted that plaintiff No.2 had purchased suit property in 2002 by way of sale-deed No.919/2002 for consideration of Rs.4,50,000/- from defendant No.1 & 2. At that time, possession is also handover to plaintiff No.2. The name of plaintiff No.2 is entered in the ownership

column by mutation entry No.830. It is still not challenged. On suit property, plaintiff No.2 has borrowed loan of Rs.10,00,000/- and it is in mutation entry No.862. In 2008, plaintiff No.2 decided to sale the suit property and sold the suit property to plaintiff No.1 by way of sale-deed No.2078/2008 for the consideration of Rs.8,05,000/-. At time also plaintiff No.2 had handed over possession of suit property to plaintiff No.1. Then name of plaintiff No.1 is mutated by mutation entry No.1224. So the contention of the defendants that the suit property is allotted by the Government and so it cannot be sold or transferred to anyone is not sustainable. After the execution of sale-deed no.2078/2009 this defendants are recorded the mutation entry No.1286 on 03.07.2009 without giving notice to the purchaser.

17. Then defendant filed appeal to Sub-divisional Officer, Ahmednagar and get relief of status quo. So name of plaintiff No.1 cannot be entered in the ownership of suit property. Sub-divisional Officer, Ahmednagar cancelled the mutation entry No.1224 and given direction to proceed as per R.D. No.50/1995 & RCS No.55/2009. Then plaintiff No.1 filed appeal against that order which is pending. Then in the year 2020, defendant tried to obstruct the lawful possession of plaintiff over suit property. So plaintiff constrained to file this suit. In R.D. No.50/1995, this defendants and other legal heirs entered in to the compromise and agreed on their respective shares in the suit property. After that all the properties are divided and the name of defendants and their legal heirs are recorded in the record of rights. This facts are suppressed by the

defendants from the court. This defendants with the help of Tahsildar, get the order of crop survey in his name.

18. Plaintiff denied the contention of the defendants that husband of plaintiff no.2 get manage transfer of suit property in pretext of mortgage deed. Because defendants has neither challenged the sale-deed nor challenged the mutation entry No.830. Plaintiff no.1 is residing at Ambarnath. So this defendants get the advantage of this fact and tried to grab the suit property of plaintiff no.1 and so defendants has filed various applications to Kranti Sugar Factory.

19. Defendants have no title and possession and hence no *prima-facie* case, balance of convenience is not lies in favour of defendants. If injunction is granted then plaintiff became dispossessed from suit property. It cause irreparable loss to plaintiffs. Hence prayed to reject the application with cost.

Injunction application of Defendant No.6 to 8 in Counter claim (Exh.65) :

20. Defendant No. 6 to 8 are filed counter claim and this application is under Order 39 Rule 3 of the Code of Civil Procedure.

21. Defendants submitted that the suit property is their ancestral property . These defendants are the real sisters of the defendant No.1 & 2. They further submitted that, after their marriage, they are residing at their matrimonial house, but they are in possession and cultivation of suit property and taking various crops. The suit properties are not partitioned by mets and bounds. In the 2021, they get the knowledge about sale

deed executed by plaintiff no.2 in favour of plaintiff No.1.

22. They further submitted that their brother i.e defendants no.1 had 2 has borrowed some money from husband of plaintiff No.2 and in lieu of that money husband of plaintiff No.2 has fraudly executed the sale-deed of the suit property in the name of his wife i.e. plaintiff No.2. The suit property was never handed over to the plaintiff No.1 & 2. These defendants have indefeasible right in suit property. They also filed RCS No.335/2021 for partition of the ancestral property. Hence, defendants prayed that till the partition, temporary injunction be granted against the plaintiffs No.1 & 2.

23. Defendants have *prima-facie* case. Balance of convenience is lie in favour of defendants. Theses defendants have right to pre-emption to purchase the property. Plaintiff may alienate, lien, sale or transfer the suit property. If the injunction against plaintiff is not granted, then irreparable loss caused to the defendants. So plaintiff prayed for temporary injunction against plaintiffs

Say of plaintiffs to the counterclaim of Defendant no.6 to 8 (Exh.67) :

24. Plaintiffs submitted that present defendants has no concern with the suit property. They are filed the RCS No.335/2021 for partition of suit property along with other ancestral properties of Ravji Dere. After the death of common ancestor Ravji Awji Dere their son has divided 1/3rd share and that effect is recorded in mutation entry No.3070 on 29.11.1978. The Kalawati Auti daughter of Ravji Dere had filed

partition suit No.31/1987. That suit was decreed in 1995 and R.D. No.50/1995 was filed for the execution of decree. In that execution proceeding, all the plaintiff and defendants entered in to the compromise. In that compromise, the suit property was allotted to the Shrikant Dere and Babasaheb Dere (defendant No.1 & 2).

25. Thereafter, by suppressing the execution of RD No.50/1995, the defendants and other legal heirs had filed RD No.55/2009 and fraudly obtained the mutation entry No.1241. After that in that darkhast, also parties entered in to the compromise. Accordingly, all the property are partitioned between the plaintiffs and their legal heirs. So the effect of RD No.50/1995 and 55/2009 is executed. The suit property is sold in 2002 and in 2008. So the present defendants has no right of preemption as co-parcener to purchase the suit property. The property has been transferred before 2004 and the present defendants were not the member of joint family before 2004. So they have no right in the suit property. The present defendants has not taken any steps after the execution. Defendants are silent on their right since 2002. After partition the suit property was not joint Hindu family property of the all defendants. These defendants have no *prima-facie* case. Only to harass the plaintiffs these defendants has filed the application in collusion with other defendants. So prayed for rejection of application with the cost.

Arguments of plaintiffs :

26. Learned Adv. Shri. Dere for plaintiff argued that

plaintiff no.1 is in settled possession since 2008. The darkhast No.50/1995 has been effected and partition also effected by metes and bounds. Plaintiff No.2 admitted the possession of plaintiff No.1. Sale-deed is the exclusive proof of title and ownership. Title follows the possession. These plaintiffs have title and possession. At the time of execution of sale-deed, name of this defendants are not entered into the column of other rights of the 7/12 extract of the suit property. Defendant No.1 & 2 are the co-parcener. Hence, at the time of sale-deed they had every right to sale their share. The sale-deed executed in favour of both the plaintiffs are not challenged by the defendants. Defendant No.6 to 8 have no right of pre-emption.

27. Plaintiff has established *prima-facie* case and balance of convenience lies in his favour and he will suffer irreparable loss if he is not protected by interim order. Hence plaintiffs prayed that defendants may restrain from disturbing long settled possession and occupation of plaintiff over suit property. plaintiffs also filed written arguments.

Arguments of defendant No.1 & 2 :

28. Learned Adv. Shri Barhate for defendant No.1 & 2 argued that basically suit is not itself maintainable because the suit for injunction is filed only on the base of possession. The suit property is joint Hindu family and ancestral property of the defendants. No partition is effected by metes and bounds. Hence, no question of handing over possession to plaintiff No.2. Civil proceeding and various RTS Appeal are pending in respect

of suit property. Defendants are in possession of the suit property and the crop survey entry is in the name of defendants. The crop survey entry, RTS orders, affidavits of adjacent co-owners and other Government papers shows my possession over the suit property. No cause of action to file the present suit. Plaintiff No.1 fraudly obtained the sugarcane cultivation certificate from the sugar factory to show the possession. Plaintiff No.1 has no title and possession. Plaintiff No.2 has no *locus-standi*. So the defendant prayed to protect their possession by allowing the injunction in the counterclaim against the plaintiff. Defendants also filed written arguments.

29. To support the case defendants relied on the following citations :

1) Annatula Sudhakar Vs. P. Buchi Reddy (Dead) by L.Rs, 2008 AIR SCW 2692 AIR Online. In this case Hon'ble Supreme Court held that the position in regard to suits for prohibitory injunction relating to immovable property, is summarized as under ;

a) where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where do jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

2) Makers Development Services Pvt. Ltd. Vs. M. Visvesvaraya Industrial Research and Development Centre, in Civil Appeal No.9709 of 2011, Hon'ble Supreme Court held in point No.6 that it is settled law that while passing an interim order of injunction under O.39, R.1 & 2 of the Code of Civil Procedure, 1908, the court is required to consider three basic principles, namely a) *prima-facie* case, b) balance of convenience and inconvenience and c) irreparable loss and injury. In addition to the above mentioned three basic principles, a court, while granting injunction must also take into consideration the conduct of the parties. It is also established law that the Court should not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequences depending upon the nature thereof and in dealing with such matters the court must make all endeavours to protect the interest of the parties.

Arguments of defendant No.6 to 8 :

30. Learned Adv. Shri B. M. Pathare for defendant No.6

to 8 argued that defendants had never relinquished their share in the suit property and other ancestral properties. The darkhast proceedings filed for the execution of decree of the ancestral properties are pending. The present defendants are co-parcener. So they have undivided share in suit property. This defendants have right to pre-emption. The defendant No.1 & 2 sold the suit property without their consent. They still are in possession of suit property. So they prayed for grant injunction against the plaintiff from the obstruction to their possession over the suit property.

31. Heard the plaintiff and defendants. Perused the documents attached therewith. On hearing, following points arise for my determination & I have recorded my findings there upon as follows :-

No.	Points	Findings
1.	In whose favour <i>prima-facie</i> case lies ?	In favour of plaintiff.
2.	Who will suffer irreparable loss if injunction is not granted ?	Plaintiff will suffer irreparable loss.
3.	In whose favour balance of convenience tilts ?	In favour of plaintiff.
4.	What the order ?	The application of the plaintiff is granted.

Documents filed by plaintiffs :

32. Plaintiffs have filed 7/12 extract of gat No.306, sale-deed No.919/2002 & 2078/2002 along with Exh.3. They also filed bank statement of plaintiff No.1 of HDFC Bank, Musalewadi, income extract, income tax return for the year

2020-21, registration certificate of sugarcane crop, affidavit of plaintiff No.2, Sandip Gosavi, Tulshiram Bhor & Ramdas Yewale along with Exh.22. They also filed copy of Exh.11 in R.D. No.50/1995, copy of Exh.65 in RCS No.97/2009, copy of Exh.36 in RCS No.275/2009, copy of Exh.55 in R.D. No.55/2009 along with Exh.26. They filed copy of N.C. No.650/2021 dated 31.05.2021, N.C. No.740/2021 dated 12.06.2021, FIR No.426/2021 along with Exh.35. Mutation entry No.1241, 1286, 823, 830, 825 along with Exh.58. Copy of order in delay condonation application No.326/2021 and RTS Appeal No.61/2022.

Documents filed by defendant No.1 & 2 :

33. Affidavit of adjacent co-owner i.e Ramdas Kurhade, Ramdas Kanase, Pravin Zinzad, Dhananjay Dere, 7/12 extract of gat No.303, 306, application given by Balasaheb Dere to the Collector for the strike against money laundering, application given by plaintiffs to Sugar Factory, application given by Balasaheb Dere to Talathi and Tahsildar, application given to Talathi for crop survey for the year 2008-09, form 7B forwarded by Talathi to Tahsildar, copy of judgment in Appeal No.50/2013, Intimation letter, 7/12 extract of gat No.306 in the year 2009, affidavit of Bhaskar Narsale, letter of Kranti Sugar & Power, Dist. Pune addressed to Balasaheb Dere dated 27.03.2021, information about gat No.306 called by Balasaheb Dere from Kranti Sugar & Power Ltd., delay condonation application given to Sub-divisional Officer, Shrigonda-Parner and order on that application, copy of order below Exh.5 and decree in RCS

No.31/1987, letter dated 12.02.2008 issued by Co-operative Society Renwadi, extract of mutation entry No.546, documents of crop survey case and order , extracts of mutation entry No.823, 825, 1241 & 1286, copies of appeal preferred against the order of delay condonation Application No.326/2021 and RTS Appeal No.61/2022 passed by Sub-divisional Officer, Shrigonda.

Documents filed by defendant No.1 & 2 in counterclaim :

34. Application given by Maruti Dere and Shobha Auti to Kranti Sugar Factory, letter given to Kranti Sugar Factory by Balasaheb Dere to obtain the information in respect of gat No.306, letter of Kranti Sugar & Power Ltd, Pune dated 27.03.2021, FIR No.419/2021, application given by Shrikant Dere and Babasaheb Dere to Collector dated 14.06.2021, mutation entry No.3070, order of Additional Commissioner, Pune dated 24.09.1974 and photographs.

REASONS

AS TO POINT NOS.1 TO 4 :-

35. It is settled principle of law that while deciding application of temporary injunction mini trial should not be conducted. There are cardinal principles to be assessed while deciding the application is *prima-facie* case, balance of convenience and irreparable loss. To claim injunction plaintiff has to show *prima-facie* case in his favour. *Prima-facie* case means issue in plaintiff favour capable of being tried. Therefore at this juncture, it is necessary to see in whose favour *prima-*

facie case lies.

36. Admittedly, the suit property is the ancestral property of defendants. Documents filed on record shows that RCS No.31/1987 was filed by one co-sharer Kalawati Auti for partition. In that suit these defendant no.1 to 3 were parties to the suit. That suit was decreed in 1995 and each allotted 8/35 share to each co-sharer. Then R.D. No.50/1995 was filed for execution of decree passed in RCS No.31/1987. That decree was finalized on 08.08.1996. In that darkhast, parties were entered into compromise. In that compromise, plaintiff Kalawati Auti relinquished her right in respect of gat No.306. The defendant No.1 to 3 were allotted share in gat No.306 along with other ancestral property. That effect has been recorded in mutation entry No.1241 & 823.

37. Then mutation entry no.546 shows that defendant No.3 Rajaram given application on 20.10.1995 and recorded name of defendant No.1 & 2 in record of right of 7/12 extract of gat No.306 and 326. Then name of defendant No.1 & 2 recorded as owner of suit property by mutation entry No.546. The sale deed no.919/2002 shows that this defendant No.1 & 2 were executed sale-deed on 09.09.2002 in favour of plaintiff No.2 for the consideration of Rs.4,50,000/-. The name of plaintiff No.2 has been recorded as owner in the 7/12 extract of gat No.306 by mutation entry No.830.

38. It is the contention of the defendant that plaintiff No.2 has fraudly executed the sale-deed No.919/2002. They also

submitted that suit property was mortgaged for borrowed money but plaintiff No.2 execute deed of sale instead of mortgage. On perusal of contention sale-deed No.919/2002 shows that consideration of Rs.4,50,000/- was accepted by defendant No.1 & 2. In the sale deed it is specifically mentioned that Rs.4,50,000/- was borrowed for legal necessity and in lieu of that money, they sale the suit property. Defendant No.1 & 2 has neither challenged the mutation entry no.830 nor filed any suit for cancellation of sale-deed No.919/2002 executed in favour of plaintiff No.2. The mutation entry No.830 is not cancelled till today. At the time of giving effect to the execution of decree in RCS No.31/1987, the mutation entry No.1241 was recorded by excluding the suit property. This shows that the suit property is already transferred in the name of plaintiff No.2. Hence, revenue authority excluded the suit property.

39. Then this plaintiff No.2 has executed the sale-deed No.2078/2008 in favour of plaintiff No.1 on 27.05.2008 for the consideration of Rs.8,05,000/-. The mutation entry no 1224 shows that name of the plaintiff No.2 was also recorded in 7/12 extract by mutation entry No.1224 but, this entry was cancelled by the revenue authority. The plaintiff No.1 is second purchaser and sale-deed No.2078/2008 is executed in 2008 i.e. 14 years. This sale-deed neither challenged not filed suit for cancellation of sale-deed. Though title is with plaintiff No.2 but plaintiff No.2 admitted that she has handed over the possession to plaintiff No.1. So *prima-facie* it shows that plaintiff No.1 is in possession of suit property.

40. To show the possession, plaintiff No.1 has produced on record the copy of sale-deed No.2078/2008 executed by plaintiff No.2 along with her affidavit. She specifically mentioned in the affidavit that she handed over the possession of the suit property to the plaintiff No.1. Plaintiff has filed affidavits of laborers working in his field. He also filed statements of payment of sugarcane from March 2019 to April 2021 and 1st March to 26th March received from sugar factory.

41. Plaintiff has filed the sugarcane cultivation certificate No.513 dated 11.08.2020 issued by Kranti Sugar Factory. That shows that plaintiff have sugarcane crop in gat No.306 situated at village Chombhut. Then in counter reply, defendant No.1 & 2 filed certificate issued by Manager of Kranti Sugar Factory containing that plaintiff has obtained the sugarcane certificate fraudly by giving false information. On one hand Kranti Sugar Factory issued certificate of cultivation of sugarcane and on other hand, issued letter that certificate is obtained fraudly. So both are contrary statements but this is not the proper stage to decide the authenticity of that document.

42. It is also contention of defendant No.1 & 2 that execution of decree in RCS No.31/1987 is pending for possession. Other R.D. No.55/2009, RCS No.97/2009, RCS No.205/2009 & RCS No.207/2009 are pending regarding suit property. Though the other civil proceedings and darkhast are pending in regard to suit property, but defendant not brought on record whether there is any stay order regarding execution of decree.

43. The defendant has argued that the ancestral suit properties are not partitioned. Hence, no question of handing over possession to plaintiff No.2 Shobha Auti. As above discussed mutation entry No.1241, 830 & 546 shows that the partition has been effected between defendants and their legal heirs. Defendant No.1 & 2 were also parties to RCS No.31/1987. In execution, share in gat No.306 was allotted to them. So they had every right to sold their share in suit property. Sale deed shows defendants transfer the suit property to plaintiff no.2 and she sold to plaintiff no.1. So *prima-facie* it show that by virtue of that sale deeds plaintiffs are in possession of suit property.

44. Defendant No.1 & 2 raises the claim of plaintiff on the specific ground that partition of ancestral property and the decree of the partition is not executed by metes and bounds. For the sake of argument, if we consider that the partition is not effected by metes and bound. But it is nowhere explained by the defendants that how their names was recorded to the ownership only one of the ancestral property i.e. suit property. The defendants are sold the specific property i.e. gat No.306 that means the suit property was identified at the time of sale-deed. So the theory of defendants that possession is not handover to the plaintiff is *prima-facie* not probable. Defendants has not given any probable reason as to why they does not challenge the title of plaintiff No.2 if the sale-deed is fraudly executed.

45. Defendants strongly argued that they are in possession of suit property. To support the claim of possession defendant relied on affidavit of adjacent co-owner, crop survey

entry, order passed by Tahsildar in 2008-09 and the mutation entry no.1286. But crop entries are recorded only for fiscal purpose. That entries are in the year 2008-09. The documents filed by plaintiff are in the year of 2020-21 i.e. sugar cultivation certificate. The mutation entry No.1286 shows the name of defendant in column of other rights but the mutation entry was recorded on 03.07.2009 which is after the execution of sale-deed in favour of plaintiff No.1. So it seems to be after thought act of the defendants.

46. Though the name of plaintiff No.1 is not recorded to ownership of suit property but it is also admitted that plaintiff No.2 is owner of suit property and she admitted the possession of suit property. Except affidavit of adjacent co-owner nothing brought on record by defendant No.1 & 2 to show that they have possession over the suit property. The sale-deed executed by defendant in favour of plaintiffs are still in existence. Defendant neither challenged the sale-deeds not challenged the mutation entries of sale-deed. Title is with plaintiffs and title follows the possession.

47. In respect to defendant No.6 to 8 are the real sister of defendant No.1 & 2 and daughter of defendant No.3. They also prayed injunction in counterclaim on the ground of non-partition of ancestral property. Admittedly, in RCS No.31/1987, the defendant No.6 to 8 were not parties to the suit. But, the father of these defendants by mutation entry No.546 has recorded names of defendant No.1 & 2 to the record of suit property. Then these defendants sold their share to the plaintiff

No.2. After that plaintiff No.1 by following due process of law had purchased the suit property from plaintiff No.2. As above discussed defendant No.1 & 2 had every right to sale the suit property at the time of execution of sale-deed.

48. So plaintiff No.1 & 2 are now in the shoe of co-sharer. So as per settled position of law, the injunction cannot be granted against co-sharer when property is ancestral and one coparcener sold his share to another then purchaser enter into steps of co-sharer. In the present case, according to execution the shares are divided and then defendant No.1 & 2 are sold the suit property to plaintiff No.2.

49. Since 1987, the partition suit and other suits regarding ancestral properties of defendant No.1 to 8 are filed and decreed. The darkhast also compromised and some are pending. But it is nowhere brought on record that this defendant No.6 to 8 are taken any objection to the execution of the partition or any revenue record. They neither challenged sale-deed No. 919/2002 and 2087/2008 nor challenged revenue entries.

50. The copies of RTS Appeal No.50/2013 shows that these defendants are the party to the appeal which is filed in 2013. It means that these defendants have knowledge about the transfer of suit property. The first sale-deed is executed in 2002 i.e. before 20 years ago. But, the defendants are sleep over their right since many years. Hence, this counterclaim seems to be after thought theory of the defendant No.6 to 8. So the

defendants have no *prima-facie* case.

51. It is the basic principle of the law is if any person purchase the property by giving the consideration then he has every right to enjoy the fruits of the property until and unless any contrary is not brought on record. The plaintiff No.1 has paid the consideration to plaintiff No.2 and purchased the property with due process of law. At the time of sale-deed, he purchased the property from plaintiff No.2. Hence, no question of the knowledge to the plaintiff No.1 about pending litigation of the defendants.

52. On the basis of above discussion, *prima-facie* it appears that plaintiffs are having *prima-facie* in possession of suit property. So plaintiffs have a *prima-facie* case. There is no material on record to show that there was no partition of the suit properties till date. Hence, in the view of above discussion, plaintiffs are having *prima-facie* case, if injunction is not granted then, defendants might dispossess plaintiffs from suit property and the plaintiffs will suffer irreparable loss. The balance of convenience lies in the favour of plaintiffs. Hence, considering above discussions point Nos. 1 to 3 are answered in the affirmative and in view of point no.4 following order is passed,

O R D E R

1. The application (Exh.5) of plaintiffs is allowed.
2. Defendant No.1 to 8 are hereby temporarily restrained from obstructing the lawful possession of the plaintiffs over the suit property till disposal of the suit.

3. The injunction application (Exh.52) of defendant No.1 & 2 in counterclaim is hereby rejected.
4. The injunction application (Exh.62) of defendant No.6 to 8 in counterclaim is hereby rejected.

Sd/-

(S. C. Salvi)

Date : 07.11.2022
Parner.

2nd Jt. Civil Judge Junior Division,
Parner