

ORDER PASSED BELOW EXH.5

1. This is an application under Order-XXXIX Rule 1 and 2 read with sec.151 of The Code of Civil Procedure (in short “CPC”) for grant of temporary injunction.
2. Read the application and say.
3. Heard Ld. Adv. for both the sides
4. It is submitted by the plaintiff that, the present suit is for permanent injunction and suit property was purchased by his grand-father on 26-04-1961 to registered sale deed and after demise of his grand-father and father, he is the owner of a land property bearing S.No.52 block no.183 administering point 82R situated at Rajura Sarode, Tq. Murtizapur, Dist. Akola, which is bounded as under:-

| | | |
|---------------|---|------------------------|
| Towards East | - | Ruprao Sarode’s Land |
| Towards West | - | Tidake’s Land. |
| Towards North | - | Makeshvar’s Land. |
| Towards South | - | Prashan Tayade’s Land. |
5. Plaintiff is owner of and in possession and cultivating the suit property and the same is also mutated in his name. Defendant, without any right or interest in the suit property, wrongfully disturbing the plaintiff’s possession over the suit property which is resulting in mental distress and loss in cultivation of the suit property. For the same plaintiff has also lodged the NC to the Mana PS and thus defendant be restrained from disturbing the plaintiff’s possession over the suit property.
6. Defendants filed their say at Exh.-12 and opposed the application. It is contended by the defendants that, the plaintiff is

not the owner of the suit property and neither in possession nor cultivating the suit property. He further contended that the plaintiff is taking undue advantage of mistakes in consolidation procedure resulting in error in the documents related to suit property.

7. Hearing rival voices of both the parties, following are the points determination, along with reasons and findings thereon.

| <u>SR.</u> <u>No.</u> | <u>POINTS</u> | <u>FINDINGS</u> |
|--------------------------|--|---------------------|
| 1. | Whether plaintiff have prima-facie case? | YES |
| 2. | Whether balance of convenience lies in favour of plaintiff? | YES |
| 3. | Whether plaintiff will suffer irreparable loss if injunction is not granted? | YES |
| 4. | What order? | As per final order. |

REASONS

8. The purpose of grant of temporary injunction is to maintain status quo and to protect the interest of the parties, pending disposal of the suit. The power to grant a temporary injunction lies at the discretion of the Court. However, the discretion should be exercised reasonably, judiciously, and by following legal principles. The grant of an injunction is in the nature of equitable relief and the Court has undoubtedly the powers to impose such terms and conditions as it thinks fit.

9. As per order-XXXIX Rule-1 of Code of Civil Procedure-1908, temporary injunction may be granted in cases, *where in any suit it is proved by affidavit or otherwise—*

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

10. Hon'ble Apex Court in ***Anand Prasad Agrawalla V Tarkeshwar Prasad (2001)5 SCC 568***, has held that, while deciding an application for temporary injunction, Court must not hold a mini trial and prima-facie observation on three basic questions would be sufficient to decide it.

AS TO POINT NO.-1

11. 'Prima-facie case' is not a case that, ultimately the plaintiff must succeed in the final order of the suit. What is required

for a party, which claims injunction that, it must make out a case for inquiry and if the party succeeds in pointing out case for inquiry, there should not be any difficulty for the court to record a finding that the plaintiff has prima-facie case in his favour.

12. Ld. Adv. for the plaintiff argued that, suit property is in possession of the plaintiff and for the same he has filed documents on record. Plaintiff is owner of the suit property and lawfully carrying out cultivation and thus he has prima-facie case. He also relied on Shersing Vs JT Director of Consolidation 1978 AIR 1341 and Parsinni Vs Sukhi (1993) 4 SC 375.

13. On contrary Ld. Adv. for the defendant argued that, suit property is is not in possession of the plaintiff. All blocks in survey no. 183 are not mentioned by the plaintiff. Further, in previous RCS no. 9/2014, the present plaintiff was the defendant and he admitted that he purchased block no.182 but mistakenly in sale deed block no.183 is mentioned. In that RCS 9/2014 on the application present plaintiff, land was measured by the TILR and the map of the TILR shows that forefather of the present defendant is in possession of the suit property though in 7/12 extract name of plaintiff is mentioned. Present plaintiff and then defendant in RCS 9/2014 had not objected the map prepared by TILR and thus it shows that defendant and not the plaintiff in not in possession in suit property and thus plaintiff have no prima-facie case.

14. In order to show his possession, plaintiff has filed on record 7/12 extract of the suit property, copy of sale deed of the suit property, Gaon Namuna 6 , Mutation entry, land consolidation report of Land Registrar, Gaon Namuna 9 A of the suit property. Perusal of his documents shows that 7/12 extracts of the suit property for the year, 2008-2009, 2021 and 2023 is in name of plaintiff's. Mutation dated 16-06-2001 also shows plaintiff's name, land consolidation report also shows plaintiff's name along with Gaon Namuna 9A.

15. Though, Ld's Adv. For the defendants vehemently argued that map shows the defendants possession, the said map is part and parcel of RCS 9/2014 and admissions given by any party in that suit, cannot be considered in this suit at this stage. He further argued that during consolidation procedure his name was removed from 7/12 extract and he also relied on a sale deed of his forefather Parnya Gangaram who purchased the suit property from Tulshiram Sadusa in 2008.

16. Considering, the 7/12 extract of the suit property, Gaon Namuna-7 and Gaon Namuna – 6 mutation, prima-facie possession of the plaintiff is to shown. As to the arguments of the defendants that, during consolidation procedure his name his removed from the 7/12 extract is concerned, it will be the matter of the evidence which need not be considered at this stage. Further, as to the alleged sale deed filed by the defendant is concerned, again it will be matter

of evidence and merit. Plaintiff prima-facie shows his possession and document in the form of N.C. report also prima-facie shows disturbance to his possession by the defendant. Thus, considering prima-facie possession of the plaintiff and prima-facie obstruction by the defendants, I am view that, plaintiff have prima-facie case and thus finding to this point is recorded in '*affirmative*'.

AS TO POINT NO.-2.

17. While deciding the point of balance of convenience, the Court must be satisfied that, the comparative mischief, hardship, or the in-convenience which is likely to cause to the plaintiff by refusing injunction will be greater than that of likely to be caused to the defendant by granting it.

18. Ld. Adv. for the plaintiff argued that, plaintiff being owner is in possession of the suit property and thus, if injunction is granted, defendant could not suffer any hardship or inconvenience on contrary if injunction is not granted, he will suffer great hardship and inconvenience due to obstruction by the defendants. Suit property is an agricultural land and thus, for its utilization, and to prevent the multiplicity of proceedings, I find that, granting the injunction would not caused any hardship to the defendants and balance of convenience leans in favour of the plaintiff and thus, finding to this point is recorded in '*affirmative*'.

AS TO POINT NO.-3.

19. As to the irreparable loss, the term 'irreparable loss' means the loss which cannot be compensated in money and applicability of term 'irreparable loss' varies from case to case depending on the facts of each case.

20. Ld. Adv. for the plaintiff argued that, plaintiff is cultivating the suit property and if he is obstructed by the defendants, he would suffer irreparable loss in cultivation. Depriving someone from continuing his possession at this stage may amount to loss that cannot be compensated in terms of money. If at the end of the trial, Court concludes that, plaintiff is not owner and in possession of the suit property, then law will take its own course. But, at present, prima-facie it comes forth that, if injunction is not granted, plaintiff would suffer irreparable loss. And hence considering the reasons discussed, finding to this point is recorded in '*affirmative*'.

AS TO POINT NO.-4.

21. In and all, plaintiff has shown prima-facie case, balance of convenience and factor of irreparable loss and thus I am view that, the case is fit enough to grant the temporary injunction to the plaintiff. And thus, in furtherance of findings to the points above, in answer to this point, following is the order.

ORDER

- 1) Application is allowed.

RCS No. 30/2023
Goutam ..Vrs.. Vinod

- 2) Defendants or any person on their behalf are temporarily restrained from obstructing the plaintiff's possession over the suit property.
- 3) Cost in cause.

Date.08.10.2024

(R. R. PAKADE)
Jt. Civil Judge (J.D.)
Murtizapur

CERTIFICATE

I affirm that the contents of this P.D.F. File Order/Judgment are same, word to word, as per the original Judgment/Order.

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|--------------------------------------|-----------------------------|
| Name of the Court | Jt. CJJD & JMFC, Murtizapur |
| Date of Order & Judgment | 08.10.2024 |
| Order/Judgment Signed by the P.O. on | 08.10.2024 |
| Order/Judgment uploaded on | 09.10.2024 |