

**ORDER**

CNR-MHAK090011672023



By way of present application, the plaintiff has sought temporary injunction against obstruction on part of defendants *vide* Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 ('CPC' in short).

2. Agricultural land gut No. 21 total area 10.H 13.R situated at Mauje Datavi, Tal. Murtizapur, Dist. Akola, out of it ad-measuring area 0.81 H.R. described more particularly in para 1 of the plaint, is the subject matter of the application and suit ('**Suit property**' for short)

3. In nutshell plaintiff's contention is that, the suit property was initially owned by one Sonaji Bhanaji Jamnik. By way of paying an amount of Rs. 7,000/- to owner Sonaji Jamnik, the plaintiff was inducted in suit property. As Sonaji Jamnik could not return said amount to plaintiff since the year 1984 the plaintiff retained the possession of the suit property with him and has been cultivating the suit property peaceably, openly and without interruption even today. The defendants by giving false police report are trying to dispossess the plaintiff from suit property otherwise than by due procedure of law. Hence, plaintiff has instituted this suit for declaration that, he become an owner of suit property and perfected title too by way of adverse possession. The plaintiff is senior citizen and if the defendants are not restrained by an order of temporary injunction, the plaintiff would loss his possession over suit property, thereby

multiplicity of the proceeding would increase. So also, the plaintiff will suffer irreparable loss, which can not be compensated in terms of money. The plaintiff has prima-facie case, balance of convenience lies in his favour. Accordingly, the plaintiff by way of present application sought temporary injunction against defendants from disturbing his possession over the suit property till the adjudication of this suit.

4. Defendants have appeared in the suit and has resisted the application *vide* written statement cum Say (Exh.8). The description of the suit property is not disputed. The ownership of one Sonaji Jamnik on the suit property is also not disputed. Thereafter the defendants have denied all adverse assertion raised in this application and plaint. The defendants combated this application contending that, the plaintiff was never in actual possession of suit property continuously, openly, peacefully. The plaintiff forcibly by paying the charges in collusion with the revenue authority illegally got mutated his name on the 7/12 extract of the suit property. The plaintiff was not cultivating the suit property continuously and one Yamunabai Jamnik had interrupted the possession of the plaintiff since the beginning. Thereafter, the Plaintiff by using political and muscle power forcibly obtained the possession of the suit property from deceased Yamunabai Jamnik. She has lodged report to police station. The legal heirs of deceased Sonaji had handed over the possession of suit property to Madhukar Nagoji Suraje and not to the plaintiff. Since, the year 1988 to 2008, the suit property was in cultivation of Madhukar Nagoji Suraje. Hence, the plaintiff did not remain the owner of the suit property. Thereafter, legal heirs of deceased Sonaji Jamnik and his three daughters have relinquished their rights over the suit property in favour of the defendants. Hence,

now the suit property is in fact an ancestral property of the defendants. Plaintiff has suppressed this material facts from this court. Plaintiff has not come with the clean hand. The plaintiff has not perfected title over the suit property by way of adverse possession. As on today, the defendants are in peaceful possession of the suit property and have grown the crops of Soyabeen, Toor on suit property. Hence, the defendants are true owner of the suit property. Plaintiff is not entitle to the equitable relief of injunction by way of this application. Hence, defendants submitted that, plaintiff has no prima-facie case, balance of convenience also does not lies in favour of the plaintiff and if the temporary injunction is granted against the defendants, they would suffer irreparable loss. Hence, defendants have prayed that, application may be reject with heavy costs of Rs. 5,000/-.

5. From the pleading of parties, argument advanced on behalf of them and record of the case, following points arise for my determination. I have mentioned my findings against each of them for reasons to follow -

<u>Sr. No.</u>	<u>Points For Determination</u>	<u>Findings</u>
1.	Whether plaintiff has <i>prima-facie</i> case ?	<b>... In the Affirmative</b>
2.	Whether balance of convenience is in favour of plaintiff ?	<b>... In the Affirmative</b>
3.	Whether plaintiff will suffer irreparable loss, in case of refusal of injunction ?	<b>... In the Affirmative</b>
4.	What order ?	<b>As Per Final Order</b>

**REASONS**

6. In support of their respective claims, both the parties have filed many documents on record. The documents include the revenue documents such as, 7 x 12 extract of the suit property, relevant mutations entries, receipt of purchase of Soyabin seeds, copy of N.C. and application moved by the defendants to concerned authorities. I have gone through the pleadings of the parties and all the documents produced on record and have given my thoughtful consideration in these documents. Heard Advocate Shri. Kambe for the plaintiff and Advocate Shri. P. E. Chakranarayan on behalf of defendants.

**AS TO POINTS NO.1 TO 4 :-**

7. All points are interconnected and based on common reasoning, hence for avoiding repetition, they are discussed cumulatively. Undisputedly, the suit property is initially owned by one Sonaji Jamnik, who is the original owner of the suit property. According to the plaintiff by way of paying an amount of Rs. 7,000/-, he has been inducted in the suit property. Thereafter, as the original owner Sonaji failed to return said amount, plaintiff has retained possession of the suit property and since the year 1984 the plaintiff has been cultivating the suit property peacefully, openly, without interruption.

8. Per contra according to defendants, plaintiff's possession on the suit property was interrupted by one Yamunabai Jamnik. Thereafter, plaintiff by using political and muscle power forcibly obtained possession of the suit property from Yamunabai Jamnik. As on today, the defendants are in actual possession over suit property

and have grown the crops of Soyabeen, Toor on it.

9. To prove the rival contention as stated above, both parties have filed several documents on record for showing their respective possession over the suit property. The plaintiff has filed affidavits of one Harinarayan Gawande, Govinda Surjuce, Dilip Gawande and Rameshwar Gawande to support his contention. However, their affidavits are vague as none of the witnesses have mentioned in the affidavits exact date, month or year of retention of possession of the suit property by the plaintiff.

10. In rebuttal, the defendants have also filed affidavits of Nanda Jamnik and Anis Khan to counter the affidavits filed by the plaintiff. In these affidavits witnesses have stated that, the defendants are in possession of the suit property even today and the plaintiff by using muscle and man power in collusion with the revenue department, illegally mutated his name on the suit property and now by using said documents, the plaintiff is trying to disturb the peaceful possession of the defendants on the suit property.

11. In the backdrop of aforesaid affidavits it is significant to note that, none of the witnesses of plaintiff nor of defendants have entered in witness box and cross-examined by the rival party. Hence, conclusion as regards trustworthiness and reliability of these witnesses cannot be drawn at this stage. In the circumstances, it would be desirable to see other documentary evidence available on record for ascertaining the actual possession over the suit property.

12. The defendants for showing their possession on the suit property mainly relied on the xerox copy of deed of Maktepatra dt. 31.10.2022. Perusal of said Maktepatra it indicates that, one

Madhukar Surjuse has got executed said deed from the defendants that in the year March 2022 to April 2023 for a period of one year Madhukar Surjuse is cultivating the suit property on rental basis. However, there is no single document on record for showing that, the prior to that, the defendants were in actual possession on the suit property. Hence, execution of the Maktepatra Deed dt. 31.10.2022 by the defendants in favour of the Madhukar Surjuse has no significant value and can not be considered as a material document for considering that, the defendants were in actual and continuous possession over the suit property.

**13.** The defendants have relied on the document list (Exh. 10/6) i.e. receipt of purchase of seeds. On the basis of said receipt, defendants have contended that, they have sown Soyabin and Toor in the entire suit property and for that purpose the defendants have purchased Soyabin seeds from Prakash Krushi Seva Kendra vide receipt No. 1037 dated 26.06.2023. On perusal of receipt dated 26.06.2023 it shows that, one Surekha Jamnik has purchased Soyabin Seeds from Prakash Krushi Seva Kendra, however, the receipts does not show that, it was purchased by the defendants only for its being sown on the suit property. In this circumstances, the receipt is not sufficient to show the possession of the defendants over the suit property.

**14.** Plaintiff for showing his possession over the suit property has relied on the series of documents i.e. 7/12 extract of the suit property since from the year of 1988 to 2010. On perusal of 7/12 extract of the suit property of the year 1988 to 2010, it indicates that, in the cultivate column of suit property the name of the plaintiff is shown as a cultivator. In this regard, Ld. Advocate for

defendants vehemently argued that, these documents are fabricated documents, prepared in collusion with revenue authority. However, no evidence is adduced in that regard by the defendants. As per section 157 of Maharashtra Land Revenue Code 1966, an entry in the record of rights, and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefore. Hence, in the absence of any such evidence, no such inference prima-facie can be drawn without affording opportunity of adducing evidence and opportunity of trial to both the sides.

**15.** Furthermore, the plaintiff has mainly relied on sale-deed dated 16.06.1988 to show that, while executing sale-deed by Sonaji Jamnik of an area 83 R land out of gut No. 21 to one Sukhdev Waylaji Wankhade, predecessor-in-title i.e. Sonaji Jamnik had admitted the possession of plaintiff on the suit property. Perusal of Sale deed dt. 16.06.1988 it indicates that, original owner Sonaji Jamnik had admitted unequivocally that, towards the northern side of gut No. 21 an area 81 R (suit property) is in possession of the plaintiff.

**16.** Nevertheless, if pleadings of defendants are carefully seen it appears that, initial possession of the plaintiff over suit property does not appear to have been disputed by the defendants. What has been disputed is that, plaintiff's possession was interrupted by one Yamunabai Jamnik. However, to buttress this aspects defendants have neither filed on record single documentary evidence nor have adduced other evidence to show that, Yamunabai Jamnik had actually interrupted the possession of the plaintiff over the suit property and thereafter, handed over it to one Madhukar Surjuse but

not to the plaintiff. Hence, in the absence of any such evidence on record, no such inference can be drawn that, the possession of the plaintiff over the suit property was interrupted by Yamunabai Jamnik.

17. Had it been the factual situation that, Madhukar Surjuse was in fact in possession of the suit property since the year 1988 to 2008, his name would have been appeared or shown in the cultivation column of 7/12 extract filed on record. It is pertinent to note that not a single public document is on record to show that, Madhukar Surjuse or Yamunabai Jamnik was in possession of the suit property since the year 1988 to 2008. Thus, it is prima-facie clear that, the plaintiff is in possession over the suit property since the year 1988. Above discussion shows that the plaintiff has successfully proved that *prima-facie* case is in his favour. Notably, Plaintiff claimed his ownership on the suit property by virtue of the theory of adverse possession. This being substantial question of law, which needs investigation and a decision on merits. In the circumstances, the plaintiff has prima-facie proves his case by raising disputable question which needs trial.

18. In this regard, I find it appropriate to place reliance on the ration of decision in case of *Dalpat Kumar v. Prahlad Singh* [AIR 1993 SC 276]. In which the Hon'ble Supreme Court has held that there should be prima facie case in favour of the applicants which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima-facie case is not to be confused with prima facie title which has to be established, on evidence at the trial.

19. In support of the contention the Ld. Advocate for defendants have placed reliance on the ratio laid down in *State of Haryana v. Mukesh Kumar and others*, (2011)10 SCC 404, wherein the Hon'ble Supreme Court observed that, “A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner. It is for him to clearly plead and establish all facts necessary to establish adverse possession. The right to property is now considered to be not only constitutional or statutory right but also a human right. Human rights have already been considered in realm of individual rights such as right to health, right to livelihood, right to shelter and employment etc. But now human rights are gaining a multi faceted dimension. Right to property is also considered very much a part of the new dimension.

20. Relying on the basis of above citation Ld Advocate for defendants has argued that, the plaintiff has not mentioned in the plaint exact date and other particulars necessary to show how he came in possession of the suit property. That may be so, I am of the opinion that, whether possession of plaintiff is peaceful ,continuous and uninterrupted as such entitles him claim of ownership by virtue of the adverse possession is a substantial question of law needs to be adjudicated only at the time of trial not at initial stage. Hence, at this juncture non-mentioning such particulars would not be sufficient to reject the relief of temporary injunction to the plaintiff, particularly when since long period the possession of the plaintiff over suit property appear undisputed.

21. Ld. Advocate for plaintiff has also placed reliance on the ratio laid down in case of *Ravinder Kaur Grewal v. Manjit Kaur* (2019) 8 SCC 729. In which Hon'ble Apex court observed that,

*“person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner, as the case may be, against whom he has prescribed. In our opinion, the consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, under other articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit”*

(emphasis supplied)

**22.** The learned advocate for defendants have vehemently argued that, the plaintiff is not title holder of the suit property. Therefore, instant suit for claiming declaration of adverse possession on the basis of defective and fabricated mutation entry is not tenable. However, I find that, in view of decision in case **Ravindra** cited supra plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act. Whether

7/12 extract of the suit property from the year 1988 to 2010 are fabricated or not is question of facts needs trial. At this threshold no evidence is placed on record by the defendants that, mutation entries of the suit property from the year 1988 to 2010 are fabricated. Hence, the suit of plaintiff is tenable .

**23.** In present case, as discussed earlier, *prima-facie* case is in favour of plaintiff and as the plaintiff is in possession over the suit property, his possession needs to be protected till decision in this suit. In the event of refusal of injunction, it would be the plaintiff who would suffer irreparable loss. No loss would be caused to the defendants as they have failed to show that they are in continuous possession over suit property. Thus, balance of convenience is also lies in favour of the plaintiff. Accordingly, point No.1 to 3 are answered in the affirmative and for point No.4 following order is passed :-

**ORDER**

1. Application (Exh.5) is allowed.
2. Issue temporary injunction against defendants that they shall not cause obstruction to the peaceful possession of the plaintiff over the suit property till final decision in this suit.
3. Costs in the main cause.

(Dictated and pronounced in open court)

Date :- 16.08.2023.

( A.G. Tamboli )  
Jt. Civil Judge, Jr. Dn.,  
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.

Name of the Steno	N. K. Shah
Name of the Court	Jt.CJJD & JMFC, Murtizapur
Date of Order & Judgment	16.08.2023
Order/Judgment Signed by the P.O. on	16.08.2023
Order/Judgment uploaded on	17.08.2023