

ORDER BELOW EXH.NO.18
(Passed on 04-02-2021)

1] By this application, the defendant being plaintiff in counter claim (Exh.17) (hereinafter called the defendant on his original nomenclature) is seeking order of temporary injunction against the plaintiff being defendant in counter claim (hereinafter called the plaintiff on his original nomenclature) under Order 39 Rule 1 and 2 r/w Section 94 and 151 of the Code of Civil Procedure, 1908.

2] Read application and say. Heard, Shri. D.S. Joshi, the learned advocate for the defendant and Shri. P.M. Kulkarni, the learned advocate for the plaintiff. Perused record of the case.

3] It is contended by the defendant that he is the owner of agricultural land bearing Survey No.101/1, area 1.18 HR of village Tiosa, Part-II, Tq. Tiosa, District Amravati, which is bounded as follows.

To the East	-	Field of Ramesh Anasane
To the West	-	Field of plaintiff
To the North	-	Field of Divanji Bakhade and Deshmukh
To the South	-	Amravati- Nagpur National Highway

(hereinafter referred to as the “**Suit field**”).

4] That the defendant purchased suit field from Anuj Hargovind Nawandar by registered sale-deed on 10.05.2011. Since, the date of purchase, he is enjoying the peaceful possession of the same. The plaintiff filed RCS No.217/2007 against the State of Maharashtra through Collector, Tahasildar, Bhaskar Raut and Vinod Raut. Latter on the present defendant joined therein as a necessary party.

5] The plaintiff has no nexus with the suit field. However, on

Regular Civil Suit No.20/2019
Uttamrao Bapat Vs. Gajanan

15.11.2011, the plaintiff came to the suit field and asked the employees of the defendant who were performing the agricultural operation over the suit field to handover the possession. So also, the plaintiff gave threat that if the possession of the suit field will not be handed over within seven days, then the defendant will face the consequences. Then after, the defendant requested to the plaintiff about not to interfere in his possession and ownership, but went in vain. Therefore, the defendant previously filed RCS No.37/2011 against the plaintiff in which this Court granted temporary injunction in his favour.

6] Being aggrieved by the order of temporary injunction, the plaintiff preferred Misc. Civil Appeal No.32/2014 before the Hon'ble District Court, Amravati, but the said appeal came to be dismissed on 05.07.2014. Then after, the plaintiff filed Writ Petition No.5323/2014 before the Hon'ble High Court bench at Nagpur. But, the said Writ Petition came to be dismissed by upholding the order passed by the trial Court. As such, the said order of temporary injunction granted in faovur of the defendant was already went up to the Hon'ble High Court and Hon'ble High Court upheld the findings of this Court regarding possession and ownership of the defendant over his field.

7] Vide written statement to the counter claim (Exh. 21), the plaintiff resisted the application of temporary injunction filed by the defendant contending that he is owner of agricultural land bearing Survey No.100/1 (Old Survey No.99), area 1.25 HR of village Tiosa, Part-II, Tq. Tiosa, District Amravati.

8] The plaintiff received his field from the State Government after his retirement from services in the Armed Force of Military. Towards the Eastern side of his field, there is agricultural land of

defendant bearing Survey No.101/1, area 0.83 HR. The land of defendant was originally owned by Vinod Bhaskarrao Raut. Said Vinod Raut sold the said land to Anuj Hargovind Nawandar and said Anuj Nawandar sold the said land to the defendant through a registered sale-deed dated 10.05.2011.

9] The plaintiff further submitted that he filed civil suit against original owner Vinod Bhaskarrao Raut in the Court of Civil Judge (Senior Division), Amravati bearing Regular Civil Suit No.217/2007. Wherein, the Government of Maharashtra through the Collector and Tahasildar, Tiosa were the parties as defendants No. 1 and 2. The said suit was filed against the said Vinod Bhaskarrao Raut for restraining him from trying to make forcible encroachment over the land of plaintiff from Eastern side. During the pendency of said suit, present defendant suo moto appeared as intervenor containing that he is the necessary party and to be joined as the defendant. Accordingly, the concern Court directed to the present plaintiff to join him as defendant. In compliance of said order, the present plaintiff was joined to the present defendant as the defendant No.4 in the said suit. The said suit was decreed in favour of the plaintiff. Said judgment and decree did not challenge by any of the defendant in appeal and hence, it attains finality.

10] However, after purchase of the field of the defendant from Anuj Hargovind Nawandar, the present defendant filed Regular Civil Suit No.37/2011 seeking declaration and permanent injunction against the present plaintiff. In the said suit, the present defendant suppressed all material facts that the actual area of his purchased land is not 0.83 HR, but it is 0.52 HR which revealed in the Government measurement

Regular Civil Suit No.20/2019
Uttamrao Bapat Vs. Gajanan

carried on 08.06.2007 of field Survey No.101/1 presently owned by the defendant. As such, by the misleading the Court, the present defendant sought temporary injunction thereby restraining the present plaintiff from forcible possession of the alleged 0.83 HR land. After said order of temporary injunction, the present defendant tried to take the possession of 0.20 HR land of the suit field from the Eastern side of the suit field. However, the plaintiff resisted the said action of the defendant and did not allow him to take the forcible possession. However, the said suit of the present defendant came to be dismissed as the defendant failed to lead the evidence.

11] Then after, the defendant along with other persons went to his field and assaulted the plaintiff by means of stick and injured the plaintiff. Therefore, the plaintiff lodged report of the said incident against the defendant and his person at Police Station, Tiosa on 03.05.2019. On account of said report, the Police registered the offence against the defendant and his person for the offence of unlawful assembly and assault. The charge-sheet of said offence is pending before the Court of Judicial Magistrate First Class, Tiosa. As such, the defendant is intending to take the forcible possession of the land from the plaintiff by taking the law in hand and trying to dispossess the plaintiff illegally.

12] In the month of May-2019, the defendant again went to the field of plaintiff and tried to plough the Eastern boundary of the plaintiff by J.C.B. machine. In the said process, the defendant again tried to take the possession of the adjoining land from Eastern boundary of the plaintiff. However, at that time, also the plaintiff succeeded from preventing the act of defendant of taking the possession of his land. At

Regular Civil Suit No.20/2019
Uttamrao Bapat Vs. Gajanan

that time, the defendant quarreled with the plaintiff. Therefore, the plaintiff lodged the report to Police Station, Tiosa. But, the police did not take action against the defendant. Therefore, the plaintiff filed present suit for declaration and permanent injunction thereby restraining the defendant from taking forcible possession his field from the Eastern side. Accordingly, the plaintiff prayed to reject the application.

13] Upon considering the contentions of rival parties, following points arise for my determination and I have recorded my findings thereon for the reasons given thereunder.

	POINTS	FINDINGS
1.	Whether the defendant established prima facie case in his favour ?	In the Negative
2.	Whether the defendant has balance of convenience in his favour ?	In the Negative
3.	Whether the defendant would cause irreparable loss, if injunction is refused ?	In the Negative
4.	What order ?	The application is rejected.

14] To substantiate the claim of temporary injunction, the defendant did not file single document.

15] In support of defence, the plaintiff relied upon 7/12 extract of Survey No.100/3, 7/12 extract of Survey No.101/1, copy of Pherphar of Survey No. 99/3, copy of Pherphar of Survey No.101/1, map of Survey No.99, 100, 97, 101, 88 and 89, map of Survey No. 101/1, copy of FIR, measurement map of Survey No. 101/1 and 101/2 dated

Regular Civil Suit No.20/2019
Uttamrao Bapat Vs. Gajanan

08.06.2007, copy of judgment (Spl.C.S. No. 217/2007), measurement map of Survey No. 101/1 (Boundary fixation) dated 12.12.2014 and measurement map of Survey No. 101 (Pot-hissa mojini) dated 17.09.2014, certified copy of Exh. 1 and order thereon in RCS No.37/2011 and application of temporary injunction and order thereon in RCS No. 37/2011.

R E A S O N S

AS TO POINTS NO.1 TO 3

16] All points are interconnected to each other and prima facie evidence thereupon is appears to be common, hence, they are taken jointly for discussion.

17] Having regard to the above narrated facts, it is pertinent to mention here that admittedly the suit of defendant against the plaintiff RCS No.37/2011 came to be dismissed in default. Wherein the temporary injunction was granted in favour of the defendant. The plaintiff filed certified copies of plaint, Temporary injunction application and orders thereon passed in RCS No. 37/2011 with list Exh.25. On perusal of certified copy of plaint in RCS No.37/2011, it shows that the defendant had filed suit for declaration and permanent injunction on 21.11.2011. Said suit came to be dismissed in default for want of evidence on 03.10.2016. Further perused the application of temporary injunction filed in RCS No.37/2011, it is altogether contended only one incident that on 15.11.2011, the plaintiff went in his field and asked to his employees to were performing the agricultural operation over the suit field and threaten to handover the possession within 7 days. In the said suit vide order dated 02.05.2014, Predecessor of this Court granted temporary injunction in favour of the defendant

and thereby restrained the plaintiff from causing any disturbance to the possession of defendant over his field. Admittedly, said order was challenged before the Hon'ble District Court and the Hon'ble High Court, but both appellate Courts confirmed finding of this Court to the extent of possession of the defendant over his field.

18] It is well settled that with disposal of main proceeding i.e. suit, effect of all interim or interlocutory orders came to an end, unless it is continued by the order of the Court. But, in the case in hand the suit of defendant RCS No.37/2011 came to be dismissed on default on 03.10.2016, therefore, the interim or interlocutory orders passed in that proceeding came to an end on 03.10.2016. Admittedly, no interim or interlocutory orders were ordered to be continued after dismissal of suit in default. Even it is not pointed out or brought on record that the order of dismissal in default is challenged by the defendant. Therefore, the effect of temporary injunction order came to an end with dismissal of suit on 03.10.2016.

19] The defendant highly relied upon the findings of this Court and it's upholding by the appellate Court up to the Hon'ble High Court about possession over his land. Therefore, it is necessary to read the findings in order. On perusal of findings in Paragraph 6 and 7 in said order, it is shown that sale-deed contains that the possession of the suit field was given to the plaintiff on 10.05.2011 itself. Also relying upon entries in revenue record, injunction was granted.

20] But, it is worth to mention here that now the counter claim and application of temporary injunction filed by the defendant at Exh.17 and 18 respectively appears to be same as the plaint and temporary injunction application in RCS No.37/2011. It shows that the

Regular Civil Suit No.20/2019
Uttamrao Bapat Vs. Gajanan

defendant came with the same case as alleged in RCS No.37/2011. The incident of disturbance dated 15.11.2011 narrated in the earlier suit and temporary injunction application is narrated as it is in this counter claim and temporary injunction application. It is not the case of defendant that after alleged disturbance dated 15.11.2011, the plaintiff caused obstruction or disturbance to the possession of defendant over his land. As such, the defendant failed to establish the disturbance on the part of plaintiff after 15.11.2011 and then after till today. It is needed to mention here that the efforts of defendant in filing present counter claim and application of temporary injunction are nothing but to give rebirth to the earlier dismissed proceeding as he get the chance as defendant in this suit.

21] Moreover, the plaintiff filed measurement map of Survey No.101/1 and 101/2 dated 08.06.2007 at Sr. No.1 with list Exh.25. On perusal of said map, it appears that the vendor of the defendant Vinod Bhaskarrao Raut shown in possession of 0.83 HR land of Survey No.101/1 and another Manjutai Rameshrao Anasane shown in 01.01 HR of Survey No.101/2. Moreover, the vendor of defendant shown in 01.18 HR land by adding 0.35 HR.

22] Moreover, in the measurement map dated 12.12.2014, the defendant shown in possession of 0.52 HR land out of Survey No.101/1. So also, 0.20 HR land of Survey No.101/1 is shown in Survey No.100. Again, 0.17 HR land of Survey No.100 shown in Survey No.101/1. As such, the area of one Survey Number in another Survey Number is shown. But, the person whose land is shown in the field of others did not come before the Court for removal of encroachment alleged in the measurement map. On the contrary, the defendant claims

his possession over 1.18 HR land. Under such circumstances, it is necessary for the defendant to establish actual physical possession as alleged by him.

23] The documents filed by the plaintiff with list Exh.4 pertaining to the land of defendant Survey No.101/1, area 0.83 HR is shown in 7/12 extract. However, the mutation entry at Sr No.53 dated 10.06.2007 shows the area of Survey No.101/1 is 1.18 HR, the mutation entry at Sr No.125 dated 19.04.2018 shows that the area of Survey No.101/1 is 1.18 HR, the mutation entry at Sr.No.339 dated 10.05.2011 shows that the area of Survey No.101/1 is 1.18 HR and the mutation entry at Sr No.106 dated 30.04.2007 shows that the area of Survey No.101/1 is 0.83 HR. Under such circumstances, it is difficult to determine actual area of the field owned and possessed by the defendant.

24] Admittedly, it appears from the record, the fields of the plaintiff and defendant is part of Survey No.100. Therefore, it is necessary to plaintiff and defendant to measure entire Survey No.100 and to ascertain the boundaries as per the Sub division purchased by them.

25] But, after going through the maps brought by both the parties on record, it appears that they are not sufficient to establish or clear the status of suit field, therefore, the maps are not helpful to the contention of the defendant.

26] Under such circumstances, the maps prepared on applications of the defendant are not helpful to ascertain the actual physical possession of the defendant over his land. Therefore, the

Regular Civil Suit No.20/2019
Uttamrao Bapat Vs. Gajanan

defendant prima facie failed to establish his possession over 1.18 HR land. Therefore, it is very difficult to rely upon the version of the defendant that the plaintiff is trying to disturb his possession. As such, question of granting injunction in favour of the defendant does not arise. Similarly, no inconvenience would cause to the defendant as there is no instance of disturbance on the part of plaintiff to his possession over his land brought on record by the defendant till today. Therefore, the defendant would not cause irreparable loss. Therefore, the application is liable to be rejected. Therefore, I answer **points No.1 to 3 in the Negative** and in answer to point No.4, I pass the following order.

ORDER

- 1] The application for Temporary Injunction filed by the defendant (Exh.18) is hereby **Rejected**.
- 2] Costs in cause.
(Order is dictated and pronounced in open Court.)

Sd/-

Place : Tiosa
Date : 04-02-2021

(Liladhar D. Korde)
Civil Judge (Junior Division)
Tiosa.