

ORDER BELOW EXH.5 IN R.C.S NO. 444/2015

(Passed on 27.09.2016)

The plaintiffs have filed present application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure restraining defendants from obstructing the peaceful possession of the plaintiffs over field Gut no.3 area 14 Guntha situated at Ghaigaon, Tq. Vaijapur, Dist. Aurangabad.

2. The plaintiff's case is summarized as under :-

They are owner and possessor of above suit field. They are using the suit land for threshing purpose(*Khala*) and a shop. Initially the suit land was standing in the name of Bhaurao Gopala Salunke and after his death name of Jagannath Bhaurao Salunke, father of plaintiff is recorded vide mutation entry no. 651. Since plaintiff and his family are possessing the same. On 21.04.2011 the father of plaintiff is died and since then, plaintiffs are possessing suit land and installed a complex for shop admeasuring 12X14 feet. Plaintiffs' grand father had given a Guntha land to Gabaji for using the same for threshing purpose without any consideration. Thereafter, name of Gabaji was recorded in 7/12 extract to the column of other rights. In year 1974-75, plaintiff's father taken back one Guntha land from Gabaji however, his name remained in other rights column. Said Gabaji died prior to 40 years, therefore, his legal heirs have no concern with suit land. On 18.10.2015, defendants come to suit land and abused the plaintiffs by threatening to kill. Plaintiffs reported the matter to police

station. Defendants are trying to encroach over suit land forcibly. Therefore, plaintiffs have filed present suit for perpetual injunction.

3. As per plaintiffs, they have proved prima facie case, balance of convenience lies in their favour and they will suffer irreparable loss if injunction is not granted. As such, they prayed for temporarily injunction.

4. Defendant filed Say Exh.15 and contented that they are owner and possessor of 4 Guntha land out of suit field. Plaintiffs have started construction illegally over 4 Guntha land therefore, defendants filed R.C.S No. 402/2015 against Gram panchayat and present plaintiffs and same is pending in C.J.J.D Vaijapur. 4 Guntha land was come to the share of father of defendant no. 1. In 7/12 extract of 1970-71 and 1994-95, 4 Guntha land is appears in the name of Gabaji. Plaintiffs are trying to encroach over the 4 Guntha land owned and possessed by defendants. Plaintiffs' father had filed R.C.S No. 328/1995 against defendant no.1 in which the T.I was rejected. So also, suit was rejected. They have preferred appeal before S.D.O to cancel the mutation entry no. 6. The plaintiffs have filed present false suit by suppressing material facts. Therefore, they finally prayed for rejection of present application.

5. The points for determination along with my findings thereon are as under :-

<u>Points</u>	<u>Findings</u>
1 Whether plaintiffs have made out prima facie case ?	... <u>Yes.</u>
2 Whether plaintiffs prove that balance of convenience lies in their favour ?	... <u>Yes.</u>
3 Whether plaintiffs will suffer irreparable loss, if temporary injunction is not granted ?	... <u>Yes.</u>
4 What order ?	... <u>Application is allowed.</u>

REASONS

As to points No.1 to 4 :-

6. Perused application alongwith documents. Heard learned advocates for plaintiffs and defendants.

7. Plaintiffs have brought present suit on the basis of ownership and possession. However, defendants have claimed their ownership and possession over 4 Guntha out of suit land. I have gone through the 7/12 extract produced by plaintiffs and defendants. It is contention of plaintiffs that their grand father had given some guntha land to the father of defendant no. 1 and in the year 1974-75, he has taken back the same from defendant no.1's father. Said contention is corroborated by the entries in 7/12 extract. Since 1959-60 till 1974-75, 4 Guntha land recorded in the name of father of defendant no. 1 viz. Gabaji in cultivation column. But, since, 1975-76, the name of

Gabaji is removed and entire 14 Guntha land appears in the name of father of plaintiffs viz. Jagannath in ownership and cultivation column. At this juncture, it reflects that one grocery shop is standing in suit land. As per defendants plaintiffs tried to encroach over 4 Guntha land therefore, they filed civil suit number 402/2015 against plaintiffs.

8. The defendant brought on record a copy of judgment and decree passed in R.C.S No. 328/1995 filed by plaintiff's father against defendant no. 1 and his three brothers. Further defendants filed the copy of order on T.I application in that suit. On perusal of those copies it reflects that, the temporary injunction was rejected but, the suit is finally decreed in favour of plaintiff's father and defendants were permanently restrained from disturbing possession over suit land Gut no. 3. In that judgment, the C.J.J.D, Vaijapur held that plaintiffs father is exclusive owner and possessor of suit land and denied the 4 Ana share of defendant no. 1's father. It is nowhere reflect from record that, said judgment was challenged before Appellate Court. As such the verdict of C.J.J.D Court, Vaijapur in R.C.S No. 328/1995 remained intact and become final. As such in view of said judgment and decree, I have no hesitation to hold that, plaintiffs being son of Jagannath are owners of suit land Gut no. 3, area 14 Guntha. No doubt still the name of Gabaji appears in the other right in 7/12 extract. However, it is well settled principle of law that, entries in revenue record does not create or extinguish any right or title. Though the name of Gabaji appears in other right column but, his name is deleted from

cultivation column since year 1975.

9. Further the photographs produced by plaintiffs suggest that, they have installed a grocery shop over suit land. Moreover, defendants contended that plaintiffs are trying to encroach over 4 Guntha land. But, plaintiffs succeed to prove their possession over suit land since 1975. The ownership of plaintiffs father is already decided in previous suit and in case at hand, the revenue record clearly suggest the possession of plaintiffs over suit land after demise of their father. As such I have no hesitation to hold that, plaintiffs have made out the prima facie case. When plaintiff proved prima facie case then balance of convenience lies in their favour. If injunction is not granted then obviously plaintiffs will deprive their rights over suit land and said loss can not be compensated in money. Per contra, defendants failed to prove their ownership and possession over 4 Guntha land therefore, they are not going to suffer any irreparable loss. As such I have recorded my findings to point no. 1 to 3 in the affirmative and the application is deserves to be allowed. Accordingly, I pass following order in answer to point no. 4.

ORDER

- 1] The application (Exh.5) is allowed
- 2] Defendants or their agent or anybody on their behalf are temporarily restrained from obstructing the possession of plaintiffs over suit land Gut no. 3, area 14 Guntha, further they

restrained from interfering the shop standing on
suit land till the disposal of suit.

3] Cost in cause.

Date:- 27-09-2016.

Sd/-
(V.G. Karmore)
3rd Jt. Civil Judge (J.D.)
Vaijapur.

((7))

R.C.S No. 444/2015 (Exh 5)

CERTIFICATE

I affirm that the contents of this P.D.F file order are same, word to word, as per the original order.

Name of the Stenographer : Smt. H.B. Baig
Court : 3rd Court, Vaijapur.
Date : 27.09.2016
Order signed by the
presiding officer on :27.09.2016
Order uploaded on :28.09.2016.