

**ORDER BELOW EXH.-5**  
**IN RCS No.250/2013**  
**(Passed on 14-11-2016)**

The plaintiff filed this application for temporary injunction under Order XXXIX Rule 1 and 2 of Code of Civil Procedure.

02- The suit is for perpetual injunction. Plaintiff claiming to be the owner and possessor of 20 R land out of Gat No. 15 admeasuring 8 Hec. 04 R situated at Varwandi(Kh.) Tq. Paithan Dist. Aurangabad (The property described above would hereinafter be referred to as the “suit property” for the sake of brevity).

03- Plaintiff averred that, the suit property is ancestral property of the plaintiff. The defendants are relatives interse. The plaintiff's father Pandharinath sold 82 R land to defendant No.1 dated 11-08-1993, 40 R. land to defendant No.2 dated 11-08-1993 and 39 R. land to defendant No.2 dated 09-11-1993. Also plaintiff's brother Sainath on 11-01-1999 sold 20 R land to defendant No.1. On completion of sale transaction defendant No.1 and 2 make division of land in respect of Gat No. 15 purchased by them.

04- Plaintiff further submitted that, defendant No.2 in order to defeat the right of plaintiff executed sale deed 5785 dt. 24-09-2012 in favour of defendant No.3 and 4. Defendant No.2 while executing sale deed shown two properties in sale deed and out of which sale deed executed in favour of defendant No.3 contains the suit property. Defendant No.2 do not have any concern with suit land. After execution of sale deed

defendants tried to interfere/obstruct the possession of plaintiff on the count that, there names are mutated on 7/12 extract. Hence, this application for temporary injunction to restrain defendants from obstructing the plaintiff's possession.

05- Defendants No.1 filed his say at Exh.11. Defendant No.2 filed his say at Exh.29. Defendant No.3 has not filed his say, therefore No W.S. order passed below Exh.1 against defendant No.3. Defendant No.4 has not appeared before the court, hence ex-parte order passed below Exh.1 against defendant No.4. Defendant No.1 and 2 refuted the entire application of plaintiff. The sum and substance of the say /W.S. of defendant No.1 and 2 is somewhat similar. Defendant No.1 and 2 contended that, plaintiff's father Pandharinath Sadashiv Dhole executed sale deed bearing No. 2896 dt. 11.08.1993 in favour of defendant No.1 in respect of 82 R. land Gat No. 15 and since then defendant No.1 is in possession of the land. He also dug a well. Also defendant No.1 purchased 20 R. land of Gat No.15 from Sainath brother of plaintiff vide sale deed bearing No.11.01.1999 and since then in possession thereof. Plaintiff trying to encroach on the suit property by taking advantage of quarrel in between defendant No.1 and defendant No.2 to 4. Hence prayed for rejection of application.

06- From rival contentions of the parties following issues arise for consideration and I record my findings thereon, for reasons thereunder.

<b><u>POINTS</u></b>	<b>FINDINGS</b>
1 Whether the plaintiff having a prima facie case ?	Yes

- |   |   |                  |
|---|---|------------------|
| 2 | Whether balance of convenience lies in favour of the plaintiff ?                      | Yes              |
| 3 | Whether the plaintiff will suffer an irreparable loss, if injunction is not granted ? | Yes              |
| 4 | What order ?  | Exh.5 is allowed |

### **REASONS**

07- Heard learned advocate for the parties respectively.

#### **As to Point No.1 to 3 :-**

08- Having considered pleadings and documents on record, it would be just and proper to set out well settled principles to grant or refuse interim injunction. It is well settled that interim injunction can be granted when there exists a prima facie case in favour of a party, there is material to infer irreparable injury which may be caused to such a party and when the balance of convenience lies in his favour. The expression "prima facie" does not imply existence of an arguable case. It also means that there exists some material which on the face of it tends to show that triable issue is involved. At the stage of considering interim application court is not required to render any finding on merits. The material placed on record is required to be examined at horizontal level. In depth scrutiny so as to render final finding of fact is not called for.

09- Keeping in mind this well settled legal position, let me consider the grounds in the application coupled with pleadings and the documents on record. Plaintiff claiming that property admeasuring 2 Hec. 34 R out of Gat No. 15 is his ancestral

property. His father Pandharinath sold 82 R land to defendant No.1 and 79 R land to defendant No.2 out of Gat No.15. His brother Sainath also sold 20 R land out of Gat No.15 to defendant No.1 from this set facts pleaded by plaintiff it is evident that plaintiff and defendants are the land holders of Gat No.15 and consequently adjoining to each other.

10- Plaintiff also submitting that he is having lands in Gat No.15 at three different places and out of that 20 R land i.e. suit property is situated at west- South corner of Gat No.15. It is the specific grievance of plaintiff that defendant No.2 executed sale deed in favour of defendant No.3 and 4 and included the suit property in the same. Therefore he sought relief of interim injunction. Plaintiff produced on record 7/12 extract of Gat No.15, sale deed bearing No. 2896/93, 2897/93, 3408/93, 107/99 and 5785/12. It is evident from 7/12 extract that plaintiff having 2 Hec. 34 R. land in Gat No.15. And also his father and brother sold some of their lands to the defendant No.1 and 2.

11- Defendant No.1 and 2 denied the averments made in the plaint. Defendant No.1 and 2 submitted that the boundaries of suit property are not correct. They contended that, the suit property not in the possession of plaintiff. Per contra the defendants are in the possession of suit property since the execution of sale deed bearing No. 2896/93 and also dug a well thereon. Defendants therefore relied on case of **Harcharanjit Singh Thind (Capt.) Vs. Deeksha Thind and others reported in 2008(3) Mh.L.J. 587**, wherein it was held by Hon'ble High Court that the party suppressing material facts from Court, does not deserve the grant of any discretionary relief, much

less a temporary injunction and also relied on a case of **Shamrao Ganpat Chintamani Vs. Kakasaheb Laxman Gorde reported in 208 (2) Mh.L.J. 819**, it was held that, at the stage of temporary injunction court can refer to document which are produced on record without formal proof.

12- The learned advocates for both the parties draw my attention to the hand sketch drawn by them on their respective pleadings. Both of them are showing different places of lands holding by the owners in Gat No.15. So that it can be said that those hand sketch were made by the parties as per their convenience and hence cannot be reliable as they are not conclusive.

13- From the above facts I would like to note that, both the plaintiff and defendants are land holders in Gat No.15 and also it is not disputed. So far as the case law of Harcharanjit (Supra) is concerned it is on different facts than the case in hand, and hence not useful for the defendants. So far as the observations made in Shamrao's case (Supra), I have gone through the documents on record. Document shows that plaintiff is having 2 Hec. 34 R. land in Gat no.15. The hand sketch of the respective parties also show that plaintiff is having 3 different lands in Gat No. 15.

14- Admittedly the suit property is the ancestral property of plaintiff. Also it is admitted that the defendant No.1 purchased his property from plaintiff's father. Thus, in this circumstances, when it appears from 7/12 extract that the plaintiff is having 2 Hec. 34 R land in Gat No.15 and the admitted fact of his having 3 different lands in Gat No.15 it

would be just and proper to grant limited relief of interim injunction in favour of the plaintiff. Therefore, in this circumstances, it is a fit case to restrain defendant No.1 to 4 from obstructing or interfering with the possession of plaintiff. This will avoid further multiplicity of proceeding. No harm or prejudice will be caused to defendant No.1 to 4.

15- To sum up, in view of the aforesaid reason, I am of the view that plaintiff has made out prima face case, balance of convenience lies in his favour, irreparable loss will be caused to the plaintiff. Whereas, if defendant are restrained from obstructing or interfering the plaintiff's possession over the suit property, no harm or prejudice will be caused to them. In turn, I answer point No. 1 to 3 in the affirmative and in answer to point No.4, I proceed to pass the following order -

### **ORDER**

- 1 Application (Exhibit-5) is allowed.
  
- 2 Defendants are restrained from obstructing or interfering the possession of plaintiff's possession over the suit property by themselves or through anybody on their behalf in any manner till the final disposal of the suit.
  
- 3 Cost in cause.

Sd/-

Date:- 14/11/2016.

( R. R. Limkar )  
3<sup>rd</sup> Jt.Civil Judge,J.D.,  
Paithan.

**CERTIFICATE**

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

Name of Stenographer : Siraj Khan M.Pathan

Court Name : 3<sup>rd</sup> Jt.C.J.J.D. Paithan  
Dist : Aurangabad

Date : 14.11.2016

Judgment signed by the  
presiding officer on : 14.11.2016

Judgment uploaded on : 14.11.2016