


<p>MHBI150002082012</p> 	<p style="text-align: center;"><u>ORDER BELOW EXHIBIT NO.05 IN</u> <u>R.C.S.NO.69/2012</u></p>
---	--

[01] By way of instant application vide order 39 Rule 1 and 2 of the Code of Civil Procedure Plaintiff has prayed to restrain Defendant or his agents from interfering with the possession of Plaintiff over the suit land in Survey No.16/2/AA. Suit land is Survey No.16/2/AA ad-measuring 4 H 22 R situated at village Sautada and its bounded as follows :-

Towards East – land of Vishwanath Babu Bhore, towards West - Kusalamb- Sautada road, towards South – is land of Abhiman Ashraji Shinde and towards North - is land of Sakharam Sukhadev Peche and Datta Sahebrao Kore.

[02] It is submitted that suit land was original owned by Bhau Eknath Shinde. He was the owner of whole Survey No.16/2/AA. He mutated the name of his grandson Sakharam Vishnu Shinde vide mutation entry bearing No.525. Accordingly, Sakharam became the owner of 7H 37R land in Survey No.16/2/AA. Sakharam sold 81R land to Bajirao Sanap and 81R land to Ashraji Sanap. Thereafter, Sakharam Shinde sold 1H 62R land to Vishwanath Bhore. It is submitted that Plaintiff No.1 Nitin Sakharam Shinde repurchased 2 acre land from Nana Manik Sanap vide registered Sale-Deed. Plaintiff No.2 repurchased 70R land vide registered Sale-Deed. Accordingly, Plaintiff No.1 became owner and possessor of 4 H 22R land.

[03] It is submitted that Defendant has no interest and right in Survey No.16/2/AA. In spite of this they are interfering with the possession of the

Plaintiffs over the suit land. The Defendant filed his say at Exh.18 and denied averments in the plaint/application. It is submitted that the Defendant and his daughter-in-law namely Arati Ram Shinde are the owner of 1H 62R land in Survey No.16/1/A. Ghulewadi- Sautada road passes through their land. Plaintiffs have filed the false map along with the plaint. Therefore, application of Plaintiffs be rejected.

[04] Considering the pleadings following points arise for my consideration to which I am recording my findings with reasons.

Sr. No.	Points	Findings
1.	Who has made out <i>prima facie</i> case ?	Plaintiff
2.	Balance of convenience lies in whose favour ?	Plaintiff
3.	Who would suffer irreparable loss, if injunction is granted ?	Plaintiff
4.	What order ?	As per final order

REASONS

As to points No.1 to 3 :-

[05] The application of Plaintiffs are supported by affidavit along with documents. Suit of Plaintiffs is for Declaration of Ownership and Perpetual Injunction. Suit land is Survey No.16/2/AA ad-measuring 4H 22R situated at village Sautada. The contention of Defendant is that he is the owner of Survey No.16/1/A of land ad-measuring 1H 62R at village Sautada. The contention of Plaintiffs are that Ghulewadi Sautda road passes through their suit land and the contention of Defendant is that the Ghulewadi-Sautada road

passes through his suit land namely Survey No.16/1/A.

[06] On perusal of the 7/12 extract it reveals the name of Plaintiff No.1 Nitin Shinde and Plaintiff No.2 Satish Sakharam Shinde in the possession column after their father Sakharam Vishnu Shinde. On perusal of the 7/12 extract of Survey No.16/1/A it reveals that the daughter-in-law of Defendant namely Arati Ram Shinde is in possession. It is pertinent to note that both the Plaintiffs and Defendant are claiming to be owners of different Survey number. The Plaintiffs and Defendant are claiming different areas in different Survey number. The dispute is also with respect to the Ghulewadi-Sautada road which passes either through the suit land or through the land owned by Defendant. The averments in the plaint depicts that the father of Plaintiff i.e. Sakharam had sold some portion of their land to the purchaser mentioned therein.

[07] In order to make out prima facie case Plaintiff has shown his possession over the suit land. The 7/12 extract entries are sufficient to that effect. So far as the issue of trespass or encroachment if any will be decided only after adducing evidence and trial. At this stage that issue need not be gone into. The Sale-Deeds executed by father of Plaintiff will also need consideration during trial. Therefore, at this stage the documents with respect to the suit land favour the Plaintiff. Plaintiff has made out the prima facie case balance of convenience lies in favour of Plaintiff and if injunction is not granted in favour of Plaintiff it will cause irreparable loss to Plaintiff. Accordingly, I answer to point No.1 to 3 in favour of Plaintiff.

As to point No.4 :-

[08] In view of the findings on points No.1 to 3, I pass following order.

ORDER

1. Application is allowed.
2. Defendant or his agents are restrained from interfering with the possession of Plaintiff over the suit land till the disposal off suit.
3. Costs in main cause.

Date: 19/03/2021.

(A. B. Madke)
Jt. Civil Judge,(J.D.), Patoda

C E R T I F I C A T E

I affirm that the contents of this PDF file Order / Judgment are same word to word, as per the original Order / Judgment.

Name of the Stenographer : A.D.Bavne

Name of the Court : C.J.J.D. & J.M.F.C., Patoda.

Judgment / Order signed by the : 19.03.2021

Presiding Officer/me on : 19.03.2021

Judgment / Order uploaded on : 19.03.2021