

**Order Below Ex.5.**  
(Passed on 30.04.2019)

Perused the application and say. Heard both advocates. This is an application filed under O.39 R. 1 r/w. Section 151 of Code of Civil Procedure (hereinafter C.P.C.), for restraining the defendants from disturbing with the peaceful possession of the plaintiff over Survey no. 798/3A of 15 R land situated within the jurisdiction of Shegaon Municipal Corporation Kasbe Shegaon Part-IV. (hereinafter suit property) till the decision of the suit.

2. On the basis of the rival contentions of the parties, the following points arise for my determination and the findings thereon with reasons are as under.

<b>Sr. No.</b>	<b>Points</b>	<b>Findings.</b>
1.	Whether the plaintiff has prima-facie case in his favour ?	... Yes.
2.	Whether the balance of convenience lies in favour of the plaintiff ?	... Yes.
3.	Who will suffer irreparable loss if the application is not allowed ?	... The plaintiff.
4.	What order ?	... As per final order.

**Reasons****As to point nos. 1 to 3 :**

3. Advocate for the plaintiff Shri. K.V.Mishra, submitted that the present suit has been filed for the relief of permanent injunction. He submitted that the plaintiff has purchased the suit property from Digambar Totaram and Ramdas Toraram vide registered sale-deed no. 2737 of 2010. The plaintiff is in possession of the suit property. The name of the plaintiff has been mutated across the revenue record vide mutation entry no. 3103. He submitted that the plaintiff has measured his property at the hands of TILR Shegaon on 09/09/2012. He submitted that on 28/03/2019, the plaintiff was showing the suit property to the other persons for trading. At that time, the defendants came in the suit property and threatened to the plaintiff for dispossession. Thus, he submitted to allow the application.

4. Per contra, advocate for the defendants submitted that the false suit has been filed by the plaintiff. He submitted that the suit property initially belongs to Totaram. After the demise of Totaram, the father of defendant no.1 i.e. Digambar Totaram and her uncle Ramdas Totaram mutated on the revenue record. By virtue of the oral partition, it was decided between them to give the suit property to the father of defendant no.1. Further, he submitted that the suit property was given to defendant no. 1 by her father in the year 1987. He submitted that the father of defendant no.1 has obtained hand loan of Rs. 20,000/- from the

plaintiff and nominally executed the sale-deed in favour of the plaintiff. In fact, the area of the suit property is 20 R land. But, the plaintiff has wrongly mentioned the area of the suit property as 15 R in the sale-deed in collusion with the revenue authorities. Further, it was reflected at the time of measurement on 09/09/2012 that defendant no.1 is in possession of 5 R land in gat no. 798/3. He submitted to reject the application. He relied on *Govindbhai Keshavlal Thakker -vs- Samasta Luhana Gnati, AIR 2002 Gujrath 86* and *Surendrakumar Singhal -vs- Municipal Corporation of Delhi, 2003(66) DRJ 18*.

5. I consider submissions of both advocates. Perused the record. While deciding this application, the principles i.e. prima-facie case, balance of convenience and irreparable loss needs to be taken into consideration. The prima-facie case depends upon the documents relied upon by both parties. No doubt, the plaintiff has to show the prima-facie case in his favour. The plaintiff has filed this suit for the relief of perpetual injunction. The plaintiff has relied on the copy of sale-deed at Ex. 4/1. I have gone through the sale-deed. It shows that the plaintiff has purchased the area of 15 R land from Digambar Totaram and Ramdas Totaram. The valuable consideration was being paid by the plaintiff at the time of execution of the sale-deed. The entire sale-deed shows that 15 R land was in the name of Digambar and Ramdas and accordingly they have sold their entire area to the plaintiff. Further, the plaintiff has relied on the mutation entry and 7x12 extract at Ex. 4/2 and 4/3. It shows that the name of plaintiff has mutated across the revenue record. So there is no dispute at this point as to the ownership of the plaintiff over Survey No. 798/3A.

6. The entire controversy revolves around the parties is in respect of the measurement conducted by the TILR Shegaon. Accordingly, the plaintiff, he got measured his land on 09/09/2012. I have gone through the map at Ex. 4/5. There is an endorsement that the actual possession of the plaintiff is falls in survey no. 798/3. And the boundaries were not fixed. Per contra, the defendants have also relied upon the two maps of same measurement sheet conducted on 09/09/2012 at Ex. 22/6 and 22/7. I have gone through the said two maps. Let me mention here that the copy of the map relied by the plaintiff and the copy of the map relied by the defendants were the same and conducted by the same measurer on 09/09/2012. But the map which has relied by the plaintiff is silent about the possession of defendant no.1 to the extent of 5 R land in survey no. 798/3. On the contrary, the map relied by the defendants show the possession of 5 R land of defendant no.1.

7. Now, at this point it will have to be firstly ascertain as to on what basis defendant no.1 got the possession of 5 R land in survey no. 798/3A, which the actual possession shown in the map in survey no. 798/3. The defendants have relied upon the 7x12 extract of survey no. 798/3 at Ex. 22/1. I have gone through the documents. No doubt, it shows the area to the extent of 20 R land. But the defendants have not filed on record the conclusive proof of the document for showing that the 5 R land in the possession of defendant no.1. In fact, the predecessor of the defendants have alienated 15 R land in favour of the plaintiff. As I mentioned supra that the predecessor of the defendants have alienated the total area which was actually in their possession at the time of execution

of the sale-deed. So, the question arises at this juncture that how defendant no.1 entered into possession of 5 R land. Therefore, without having the conclusive proof of revenue record as to the 5 R land, then on what basis TILR has given an endorsement in the map which was given to the defendant as to the possession of 5 R land of defendant no.1. Therefore, the map which has been filed by the defendants are not justifiable and reliable in the eyes of law.

8. According to the defendants, the father of defendant no.1 has given the entire survey no. 798/3A to her. The defendants have filed on record the affidavits of Ramdas Totaram and Santosh Dindokar at Ex.31. But the defendants have not filed on record a proper proof of document for showing that there was the intention of father of defendant no.1 to give her entire area of survey no. 798/3A. The copies of affidavits are not the proof of the facts. Rather, the fact that really there was intention of father of defendant no.1 to give her entire area of survey no. 798/3A will be decided at the time of evidence. Therefore, at this point contentions raised by the defendants are not justifiable in the eyes of law.

9. Here, in the present matter as per the measurement sheet dated 09/09/2012 which shows the possession of the plaintiff in survey no. 798/3. In this regard, the plaintiff has relied upon the 7x12 extract of survey no.798/3 at Ex. 29/1 which is in the name of Mohan Govinda Kathole. Now, if the plaintiff is in the possession of survey no. 798/3 as per the revenue documents, then there would have been dispute between Mohan Kathole and the plaintiff. But there is no as such dispute between the plaintiff and Mohan Kathole. Even for sake of movement, the plaintiff

be termed as a trespasser, then there would not be eviction of the plaintiff without following the due procedure of law. Therefore, the possession of the plaintiff is settled. The documents filed by the plaintiff supports his possession.

10. Further, I have gone through the case of *Govindbhai Thakker and Surendrakumar Singhal* cited supra. The facts of present case are totally different. Thus, with due respect it is not applicable to the present matter. Considering the above discussion, I come to conclusion that the plaintiff has prima-facie case in his favour. The defendants have failed to show their possession of 5 R land in survey no. 798/3A. As the plaintiff has successfully shown the prima-facie case in his favour. He is the possessor and owner of the suit property by virtue of the sale-deed registered in his favour. Therefore, balance of convenience do lies in his favour. If the application is rejected, then definitely the plaintiff will suffer irreparable loss and which cannot be compensated in terms of money. Therefore, considering the above discussion, I answer point nos. 1 to 3 in affirmative.

**As to point no. 4 :**

11. In view of affirmative findings as to point nos. 1 to 3, I pass following order.

**Order**

1] The application is allowed.

- 2] Defendants or any person claiming on their behalf are hereby restrained from disturbing with the peaceful possession of the plaintiff over Survey no. 798/3A of 15 R land situated within the jurisdiction of Shegaon Municipal Corporation Kasbe Shegaon Part-IV, till the final disposal of the case.

Sd/-

( V. V. Kulkarni )

Civil Judge Junior Division  
Shegaon, Dist. Buldana.

Place : Shegaon.

Date : 30/04/2019.

**CERTIFICATE**

I affirm that the contents of this PDF file are same word for words as per original.

Name of Steno : A.I. Shastri.

Name of Court : CJJD. Shegaon.

Upload date : 30.04.2019.