

Namdeo Molawane.

-V-

Laxman Molawane.

-ORDER BELOW EXH. 5-
(Passed on:- 25/04/2017)

The suit is filed for permanent injunction and removal of encroachment. The suit property is Gut No. 19, its area 0H-51R situated at village Pambhulwadi, Tq. Chikhli, District – Buldana.

2. It is the case of the plaintiff that the defendant is his elder brother. The defendant has agricultural land Gut No. 18 adjacent to the Northern side of suit property. The plaintiff is owner and possessor of the suit property. The suit property has come to the share of the plaintiff as per the partition effected between the plaintiff and the defendant. The defendant has no concern with the suit property. The defendant, his sons Balu, Shantaram and grand-son Pramod are trying to take forcible possession of the suit property.

3. On 12/05/2016 the defendant, his sons and grand-son came in the suit property at about 2.00 p. m. and compelled him to give half portion to the suit property to them. They destroyed the boundary marks of the suit

property. They ploughed near about 0H-5R land in the suit property. The defendant threatened the plaintiff that he will create third party interest in the suit property. The plaintiff reported the matter to Police Station, Chikhli. Hence, the plaintiff is constrained to file the present suit.

4. By the present application, the plaintiff has prayed to grant temporary injunction against the defendant restraining him or anybody on his behalf from alienating the suit property or creating third party interest in it, particularly 0H-05R encroached area, until the disposal of the suit.

5. The defendant filed the reply at Exh. 22 and opposed the application. The defendant contended that the plaintiff and the defendant had another one brother namely Rama. He has died 20 years back. The suit property is fallen to the share of the plaintiff as per the partition of the ancestral properties. The defendant is suffering from heart decease. The defendant prayed to reject the application.

6. I have heard Shri. S. N. Yandait, the learned advocate for the plaintiff and Shri. R. W Badge, the learned advocate for the defendant. The learned advocate for the plaintiff has filed the written notes of arguments at

Exh. 28. The learned advocate for the defendant has filed the written notes of arguments at Exh. 33.

7. I have perused the documents filed by the parties. The plaintiff has filed the 7/12 extract of Gut No. 18 for the year 2007-08, 7/12 extract of Gut No. 19 for the year 2007-08, affidavit of the witnesses Raju Baburao Chadidar, Paraji Tulshiram Adbane, Mahadu Yeduji Magar and Vinod Haridas Wanare. The defendant has filed the affidavit of Amol Bhagwan Udar and Ganesh Ashruji Ghumatkar.

8. It is the specific case of the plaintiff that he is the owner of 51R total land in Gut No. 19. The 7/12 extract of Gut No. 19 shows that the plaintiff is possessor of it to the extent of 0H-51R land. The plaintiff by filing the 7/12 extract of Gut No. 18 has shown that it is the different property possessed by the defendant. The above documents prima facie supports the contention of the plaintiff that the suit property has come to the share of the plaintiff. Moreover, the defendant has admitted that the suit property has come to the share of the plaintiff in partition. So, the plaintiff has prima facie shown his possession over the suit property.

9. The witness Raju Chadidar has specifically affirmed that 0H-51R land in Gut No. 19 is possessed by the plaintiff. The witness is labourer working in the suit property. He has stated that on 12/05/2016 at about 2.00 p. m. the defendant, his son and grand-son came in the suit property and destroyed the boundary on the Northern side. At this preliminary stage, the affidavit of the witness needs to be accepted. Another witness Shri Vinod Wanare has also affirmed in the same line of the above witness. The plaintiff has proved that the defendant has encroached upon the suit property.

10. As the plaintiff has possession over the suit property, it needs to be protected from being alienated by the defendant and third persons. So I am inclined to grant temporary injunction as asked by the plaintiff.

11. The defendant has not filed any release deed in support of his pleadings. Even there are no proofs on record in support of the other pleadings of the defendant.

12. The plaintiff has satisfied triple test for granting temporary injunction. In the light above discussion, the plaintiff is entitled to

discretionary relief of temporary injunction. So, I proceed to pass the following order.

-ORDER-

1. The application Exh. 5 is allowed.
2. The defendant himself or anybody on his behalf are temporarily restrained from alienating the suit property particularly 0H-05R land or creating any third party interest in it, until the disposal of the suit.
3. Costs in cause.

Sd/-.

(P. S. Kulkarni)

Jt. Civil Judge Jr. Dn.

Chikhli.

Dt. 25/04/2017.

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

Name of Steno :- Shri. M.S.Joshi,

Order uploaded on :- 06/05/2017.

Date of PDF file :- 06/05/2017.