

Order below Exh.5.

The plaintiff has made this application under order XXXIX Rule 1 of Civil Procedure Code, 1908 seeking temporary injunction restraining defendants from creating obstruction to possession of the plaintiff over the suit property.

Case of the plaintiff: -

2. The plaintiff has instituted the suit for declaration and perpetual injunction in respect of the land in Gat No. 266, situated at village Gundha, Taluka Lonar, District Buldhana admeasuring 00 H. 40 R., having following four boundaries,

East - Kisan Bhagwan Wadhawe,

West - Anusaya Pandurang Waghmare,

North - Nandkishor Bhika Yevale,

South - Gajanan Vithoba Bhagyawant.

(Hereinafter referred as the "suit property".)

3. According to the plaintiff, the suit property was purchased by his father Baban Waghmare from Kashinath Laxman Navhale on 19/06/2022 by registered sale deed bearing No. 1445. The suit property was purchased in the name of plaintiff. At that time the plaintiff was minor so, plaintiff's grand-mother namely Anusaya Pandurang Waghmare were appointed as guardian for the purpose of execution of the sale-deed. During minority of the plaintiff, his father and grand-mother cultivated the suit property. The defendant quarrels with the plaintiff and his parents and demands to transfer the suit property to him. He threatens that he will not allow to cultivate the suit property. He threatens to kill the plaintiff and his parents. On 08/06/2022 the plaintiff and his mother cultivated the suit property with Tractor, so, the defendant quarrel with the plaintiff and his mother. The defendant beat the mother of the plaintiff with shoes and threatened to kill her if she enters again in the suit property. Therefore, mother of the plaintiff lodged report against the defendant in Police Station, Lonar.

4. That on 16/06/2022 the plaintiff sowed Soyabean in the suit property. But on 17/06/2022, the defendant burnt his farm waste in the suit property and cause damage to the crop of the plaintiff. The defendant further threatened to take possession of the suit property. Again on 18/06/2022, the defendant caused loss or damage to the crop by ploughing the suit property. When the plaintiff and his mother asked the defendant about his act, the defendant beat the plaintiff and his mother by slapping and giving fist blows. Therefore, mother of the plaintiff lodged N.C. No. 503/2022 against the defendant. The defendant is creating obstruction to possession of the plaintiff over the suit property, so, the plaintiff has instituted the present suit for declaration that he is owner and in possession of the suit property, and for perpetual injunction restraining the defendant from creating obstruction in possession of the plaintiff over the suit property.

5. The defendant appeared but failed to submit his written statement, therefore, the suit is proceeded without his written statements. The defendant also failed to submit his say on this application, therefore, on 12/10/2022, my learned predecessor passed order directing that this application be proceeded without say of the defendant.

6. Since long the suit is pending for hearing of this application. Neither the plaintiff nor the defendant or their advocate appeared to make hearing. Therefore, on 06/08/2024, this court directed the plaintiff and defendant to argue of this application. However, thereafter also neither the plaintiff nor the defendant remained present. Therefore, I am proceeding to decide this application on merit without hearing the plaintiff or the defendant.

7. Considering pleadings in the pliant documents produced on record and contentions in the application, following points arise for my determination. I have recorded my findings thereon for the reasons mentioned thereunder;

Sr. No.	Points for determination	Findings
1	Whether the plaintiff has prima-facie case in his favour?	.. Yes

2	Whether balance of convenience lies in favour of the plaintiff?	.. Yes
3	Whether irreparable loss will be caused to the plaintiff, if temporary injunction is not granted?	.. Yes
4	What order?	.. The application is allowed.

REASONS

AS TO POINTS NOS. 1 TO 4 :

8. In order to avoid repetition of discussion, these points are discussed together.

9. In order to seek temporary injunction, the plaintiff has to show that he has prima facie case, balance of convenience is in his favour, and he will suffer irreparable loss in the event of refusal to grant temporary injunction. Prima-facie case means a reasonable likelihood of the plaintiff being entitled to relief. It means that the case presented for the injunction should have sufficient merit to not be dismissed outright. Balance of convenience is said to be in favour of the plaintiff, when granting injunction in favour of him is necessary to maintain balance of interest between the parties and the injunction will also not cause inconvenience, loss or legal damage to the party against whom it is granted. A loss which cannot be compensated in terms of money can be said as irreparable loss.

10. The present suit is instituted by the plaintiff for declaration that, he is owner and in possession of the suit property, and for perpetual injunction restraining the defendant from creating obstruction in his possession over the suit property. According to the plaintiff, he is owner and in possession of the suit property. The suit property is self acquired property of his father Baban Pandurang Waghmare. It is purchased from one Kashiram Laxman Navhale. At the time of purchasing the suit property, the plaintiff was minor, and therefore, his grand-mother Anusaya Pandurang Waghmare was appointed as his guardian. Plaintiff's grand-mother and father were cultivating the suit property during

minority of the plaintiff. The defendant threatens father and grand-mother of the plaintiff that, he will not allow to cultivate the suit property. On 08/06/2022, the defendant obstructed the plaintiff and his mother from cultivating the suit property. He beat the mother of the plaintiff. Therefore, the mother of the plaintiff lodged the report against the defendant. The defendant again on 17/06/2022, caused damage to crop in the suit property of the plaintiff by setting fire to wastage in defendant's land. The defendant also threatened to forcibly obtain possession of the suit property. The defendant again on 18/06/2022, caused damage to crop in the suit property and beat the plaintiff and his mother by slapping and giving fist blows. Therefore, the plaintiff lodged N. C. No. 503/2022 against the defendant. Thus, it is the case of the plaintiff that, the defendant repeatedly creating obstruction to possession of the plaintiff over the suit property.

11. The plaintiff to support his contention and pleading submitted certified copies of N. C. 503/2022, 7/12 extract of Gat No. 266 at village Gundha, mutation entry No. 1996, N. C. No. 468/2022. On perusal of 7/12 extract of Gat No. 266 it appears that the suit property is in the name of plaintiff showing his grand-mother Anusaya Pandurang as his guardian. On perusal of mutation entry No. 1996 it appears that, the suit property is purchased from Kashiram Laxman Navhale in the name of plaintiff. On perusal of N.C. Nos. 468/2022 and 503/2022 it appears that, the defendant alleged to quarrel with mother of the plaintiff in respect of the suit property. Thus, on perusal on the documents produced on record by the plaintiff, it appears that the plaintiff is owner and in possession of the suit property. Further, it appears that, defendant is creating obstruction in possession of the plaintiff over the suit property. Therefore, the plaintiff has prima-facie case, balance and convenience is also in favour of the plaintiff. If the injunction is not granted in favour of the plaintiff, there is possibility that the plaintiff will suffer irreparable loss. So, the application is liable to be allowed. Therefore, I have answered point nos. 1 to 3 in affirmative and recorded my findings accordingly. In answer to point no. 4, the upcoming order becomes necessary;

ORDER

1. Application is allowed.
2. The defendants is temporarily restrained from creating obstruction to possession of the plaintiff over the suit property i.e. the land in Gat No. 266, situated at village Gundha, Taluka Lonar, District Buldhana admeasuring 00 H. 40 R., having four boundaries, East - Kisan Bhagwan Wadhawe, West - Anusaya Pandurang Waghmare, North - Nandkishor Bhika Yevale, South - Gajanan Vithoba Bhagyawant; more particularly, described in plaint para no. 2, till disposal of the suit.

Date: 20/09/2024.
Place: Lonar

Sd/-
(Ganesh S. Khupse)
**Jt. Civil Judge Junior Divison,
Lonar.**