

**ORDER BELOW EXH. 05**  
(Passed On 02/11/2019)

This is an application for grant of temporary injunction against the defendant in a suit for declaration and permanent injunction. By virtue of this application, plaintiff wants a temporary injunction order against the defendant restraining him from raising a compound wall in front of his hut existed on new Nagar Bhumapan No. 782 (Old Gat No. 299, Bhumapan No. 489, 490 and 491) **(Hereinafter referred to as suit property)**. By way of this application the plaintiff also prayed for restraining the defendant from enjoying his possession over 2756.9 Sqr. Mtr. of land of Bhumapan No. 782.

[2] Brief facts of an application is as under:-

One Murlidhar Sakharam Sonar has vide his Gift deed dated 26.04.1944 gifted the agricultural land bearing old Gat No. 299 Bhumapan No. 489, 490 and 491 new Bhumapan No. 782. The grandfather of the plaintiff was having the possession over the suit property and now after the demise of his grandfather plaintiff and his brother are having the ownership and possession over suit property. The said new Bhumapan No. 782 consisting of a hut denoted by "A.B.C.D."

[3] Plaintiff further submitted that as per the inquiry report (चौकशी पंजी) old Khasara No. 126 (2)(d) the area of land is 1269 Sqr. Mtrs. However, when he measured the land through T.I.L.R., Sadak

Arjuni it was found that he is in the actual physical possession of 2756.9 Sqr. Mtrs. of land. Therefore, he has filed the appeal before Superintendent of Land Record, Gondia bearing appeal No. 169/2009 where he has directed to file an application with respect to correction of entry of actual area. On dated 21.12.2009 measurement of spot and re-inquiry was conducted for correction in the name, area and boundaries. During the said measurement the defendant has used abusive words for and tried to insult the plaintiff as well as the measurement officer. Defendant thereafter has criminally intimidated the plaintiff by giving threat to remove his possession over the suit property. On 09.10.2008 and 24.06.2017 the defendant has prepared forged documents and tried to obstruct the plaintiff from his ancestral property by raising a wall compound in front of his hut. Therefore, he has filed the instant application for grant of temporary injunction against the defendant and prayed to direct him not to obstruct his peaceful enjoyment of the possession over Nagar Bhumapan No. 782 area 2756.9 Sqr. Mtrs. as also not to construct the wall compound in front of his hut.

[4] Per contra, the defendant has filed his reply below Exh. 38. Defendant has specifically denied the averments in the plaint and temporary injunction application. Defendant specifically denied the ownership of the plaintiff over Nagar Bhumapan No. 782 and submitted that, one Pradip Yawalkar is the owner of said Bhumapan No. 782 and not the plaintiff.

[5] The defendant has further submitted that, with reference to old Khasara No. 126 (2) (d), Nagar Bhumapan No. 782 plaintiff has already filed the R.C.S. No. 03/2010 along with temporary injunction application against him and one Pradip Suryabhan Yawalkar. Said application was dismissed by this court on 15.03.2010. Plaintiff has thereafter withdrawn the said civil suit and without having any cause filed the instant civil suit. Therefore, the application is not only barred by the Law of Limitation but also barred by the principle of Res-judicata.

[6] He further submitted that, the father of plaintiff i.e. Chandrabhan Dajiba Yawalkar and his two brothers namely Harichand and Krushna was having a consolidated land bearing old Khasara No. 126 (2) (d) area 0.32 H.R. (0.80 decimal). The said Khasara number was re-numbered in Chakbandi as Gat No. 299. The said Gat No. 299 again re-numbered as Bhumapan No. 489, 490 and 491. However, the plaintiff has not filed any documents with respect to renumbering of Bhumapan No. 489, 490 and 491 as 782. On the contrary the old Khasara No. 126 (2) (d), new Gat No. 299 was renumbered as Bhumapan No. 783, 784 and 785.

[7] He further submitted that, the original owner of Bhumapan No. 782 was Damodhar Sakharam Yawalkar and after his death the successor namely Suryabhan and Tarachand. At present after the death of Suryabhan his legal heirs namely Pradip, Dilip and

Omprakash are the owner and possessor of Nagar Bhumapan No. 782. He further submitted that on the east of Nagar Bhumapan No. 782, Nagar Bhumapan No. 787 of which he is the owner is located and on the southern side there is Nagar Bhumapan No. 786.

[8] One Champalal Shivdayal Agrawal having agricultural land bearing Khasara No. 126 (2) (kh) area 1033.1 Sqr. Mtrs. is the grandfather of defendant. After Shakbandi the said Khasara number was re-numbered as new Gat No. 301 area 0.13 H.R. (0.31 Decimal). The said Gat No. 301 was renumbered as Nagar Bhumapan No. 787. However, due to the non-receipt of order of converting the land as non-agriculture it was shown for agricultural purpose. During the partition in the year 1995 the said Nagar Bhumapan No. 787 was received to the father of defendant. In the re-measurement said Gat No. 301 was again renumbered as Gat No. 488. In the said manner defendant is owner and is in possession of Bhumapan No. 787.

[9] Similarly, the agricultural land bearing Nagar Bhumapan No. 786 and 787 are in the ownership and the possession of the defendant and plaintiff is having no concern with it. The defendant lastly submitted that, Damodhar Sakharam Yawalkar was the owner of Nagar Bhumapan No. 782. After his demise the said Nagar Bhumapan No. 782 is in the ownership and possession of his legal heirs. However, the plaintiff has not added the legal heirs of Damodhar Yawalkar as a defendant which is a necessary party.

Therefore, he prayed for rejection of the temporary injunction by imposing upon him the compensatory cost.

[10] Heard the Ld. counsel for both the parties. On the basis of facts and documents filed on record following points arise for my determination. I have considered them at length and recorded my findings thereon followed by reasons thereof.

<u>Sr.No.</u>	<u>Points</u>	<u>Finding</u>
1.	Whether applicant is having a prima-facie case?	Negative.
2.	Whether balance of convenience lies in his favor?	Negative.
3.	Whether irreparable loss would cause to applicant if temporary injunction is refused?	Negative.
4.	What order?	As per final Order.

- **REASONS** -

**AS TO POINT NO. 1 to 3:-**

[11] As all the points are interlinked and reasons for each one of them are common, in order to avoid the repetition, I am taking all of them for common discussion.

[12] In order to substantiate the claim of temporary injunction, it is necessary on the part of applicants to show that they are having a prima facie case, balance of convenience lies in their favor and irreparable loss is likely to cause, if temporary injunction is refused.

[13] Plaintiff in order to prove his prima facie case has relied upon some documentary evidence such as under:

1. Photos of the hut and the material for construction placed on the suit property.
2. Certificate issued by Talathi, Saza No. 15, Sadak Arjuni (dated 15.02.2017)
3. 7/12 extract of old Gat No. 299
4. Complaint to the Police station officer, Duggipar (dated 25.06.2017)
5. The consolidation map issued by T.I.L.R., Sadak Arjuni (dated 1977-1978)
6. The consolidation map issued by T.I.L.R., Sadak Arjuni (dated 07.08.2015)
7. Measurement map B of Nagar Bhumapan No. 782 Sheet No. 10 issued by T.I.L.R., Sadak Arjuni (dated 07.07.2017) along with report.
8. Letter of Sub-Divisional officer, Deori (dated 09.09.2015)
9. The consolidation sheet as per 1947 Act of the year 1977-1978.
10. Letter issued by T.I.L.R. Sadak Arjuni to the plaintiff (dated 28.07.2014)
11. Akhivpatrika of Nagar Bhumapan No. 782 issued by T.I.L.R., Sadak Arjuni (dated 09.06.2017)
12. Mutation entry of plaintiff (dated 07.07.2017)
13. Form B issued by T.I.L.R., Sadak Arjuni (dated 24.04.2005)

14. Mutation entry of 05 years from 1933 to 1937
15. Copy of registered gift deed (dated 26.06.1944)
16. 7/12 extract of Bhumapan No. 299
17. 7/12 extract of Gat No. 489, 490 and 491
18. Certificate issued by Tahsildar, Sadak Arjuni (dated 13.05.2013)
19. Three photographs showing the existence of hut upon the Gat number.
20. Form No. P-11 1953 to 1956 (dated 15.05.2001)
21. Form No. P-11 1956 to 1960 (dated 10.05.2001)
22. Letter issued by Jamabandi Commissionner, Pune (dated 17.06.2017)
23. Letter of plaintiff to Jamabandi Commissionner, Pune (dated 12.06.2017)
24. Letter issued by Superintendent of Land Record, Gondia (dated 22.06.2017)
25. Letter of plaintiff dated (17.06.2017)
26. Letter (dated 27.06.2017)
27. Complaint (dated 14.06.2017 and 17.06.2017)

[14] The case of the plaintiff/applicant is based on the Land of Nagar Bhumapan No. 299 (Old) and 782 (New)/. As per the submission of Plaintiff/applicant he is the owner of said land bearing No. 782. However, as per the reply of Defendant/Non-applicant, said land was owned and possessed by Pradip Suryabhan Yawalkar and

not by the plaintiff. He further submitted that, plaintiff on the same count has filed R.C.S. No. 03/2010 against him and one Pradip Yawalkar which application for temporary injunction was rejected by this court. I have perused the said order. The issue pertaining to temporary injunction reflected to be in connection with the Nagar Bhumapan No. 782 in this suit was an issue directly and substantially an issue in R.C.S. No. 03/2010. The parties in both the suit are the same and in same capacity litigating under the same title. It also appeared to me that the temporary injunction application was rejected by predecessor court in R.C.S. No. 03/2010 after hearing both the parties.

[15] As per principle of res-judicata,

*“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them, claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”*

[16] Principle of res-judicata is applicable in the instant suit in case the plaintiff has not adduce additional or different facts or incidence than the one quoted in earlier suit.

17] The predecessor court has rejected the application for temporary injunction on the ground of want of exact area of Gat No. 782 to which plaintiff claiming to be of his land.

[18] In the instant civil suit, the defendant adduced the fact that, Pradip Yawalkar who was previously defendant No. 2 in R.C.S. No. 03/2010 is owner of Gat No. 782. If it is true then it is necessary for the plaintiff to add him as defendant in this suit as well. I opine that, Pradip Yawalkar is therefore the necessary party and his reply is must to decide the temporary injunction application. Plaintiff has not added him as defendant.

[19] Plaintiff is claiming himself to be the sole owner Gat No. 782. In that regard he has filed certain documents as per list below Exh. 4. I am reading the same while giving the reasoning one by one. The photos (document No.1 and 2) annexed do not prove the existence of a hut on Gat No. 782 unless examine to photographer. Certificate issued by Talathi, Sadak Arjuni (document No. 3) shows that old Gat No. 299 was renumbered after re-measurement as Gat No. 489, 490 & 491. The document No. 6 and 7 are maps which does not shown the Gat No. 782. It is averred by plaintiff that, he has measured his land. In that context, the document No. 8 filed by plaintiff is "B" copy of the measurement conducted at the hands of T.I.L.R., Sadak Arjuni. Perusal of which shows that, plaintiff has measured the land on 12/4/2007 where the area of Gat No. 782

shown to be of 1269 Sqr. Mtrs. and not 2756.9 Sqr. Mtrs. The total area of land in the possession of plaintiff shown to be 2756.9 Sqr. Mtrs. However, the said area also includes area of Gat no. 784(150 Sqr. Mtrs.),785 (143.3 sq.mtr.),786 (130.3 Sqr. Mtrs.) and 787 (1293 Sqr. Mtrs.). Further observation of said “B” map prima facie shows that, the possession of plaintiff over Gat No. 782 is not clear. Further, the hut shown in the map not appeared to be on the Gat No. 782. The report of measurement officer suggests that, the actual possession and original record does not match with each other.

[20] The plaintiff in his application admitted that, the matter for correction of revenue record is still under process. It ultimately transpires to me that, unless the correction has been made in the revenue record and on that basis actual physical demarcation of boundaries has not been made, it is not possible for anyone including the plaintiff to show the actual area of Gat No. 782. Thus, unless and until ownership and possession over Gat No. 782 are proved and unless issue of boundaries of Gat No.782 has been resolved, it is not possible to grant the temporary injunction in favor of person whose ownership is itself is doubtful.

[21] Order of this court for temporary injunction was passed 9 years ago. It is expected from the plaintiff during these 9 years that he has to clear the record by applying to the appropriate authority and then appear before this court. It is shown in the “B” map that plaintiff is in the possession of 1269 Sqr. Mtrs. of land, while his

demand is that of 2756.9 Sqr. Mtrs. of land. Moreover, the area of land in which plaintiff is in possession is not demarcated. Hence it is not possible to identify as to whether in reality his "hut" shown in the photographs is in existence and if it so, then it lies on Gat No. 782 of the plaintiff. All these factors are doubtful and not clear. I opine that, for proving the same evidence is necessary to lead. It is not a mathematical problem where we suppose "x" as a factor to solve the said problem. Here in the instant suit, though claiming to be his own, Gat No. 782 is not entirely in the possession of plaintiff. Secondly, the ownership of plaintiff over said Gat is in question and for the same plaintiff has not added Pradip Suryabhan Yawalkar as a defendant who appears to be necessary party. Plaintiff has not filed any specific document which shows that Old Gat No. 299 has renumbered as Gat No. 782. Lastly, this court has already rejected the temporary injunction application in former suit and thus, for want of fresh cause of action, which though mentioned, is not applicable for want of correction of record by the plaintiff. Hence, in view of aforesaid reasons, I am of the considered view that, plaintiff does not have a prima facie case, balance of convenience does not lie in his favor and irreparable loss would not cause to him in case the application is rejected.

[22] For aforesaid reasons, I answer the point no's 1 to 3 in negative and as to point no.4, I proceed to pass following order-

**ORDER**

- 1] Application is rejected.
- 2] Cost in cause.

[Nitin Dhoke]  
Civil Judge Junior Division,  
Sadak-Arjuni,  
DISTRICT-GONDIA.