

Order Below Exhibit 5

This is the application for temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure (the CPC in short).

2 The plaintiff submits that she has filed suit for perpetual injunction. She is the owner and possessor of agricultural land admeasuring 69.5 R out of Gut No.58 situated at Bazer Wahegaon, Tq. Badnapur, District-Jalna. The boundaries of the suit property are as under: East-Agricultural land of Baburao, Dhondiba Narwade, West-Sarkari Shiv (Malegaon), South- Agricultural land of Ramabai Sahebrao Kharat and North- Agricultural land of Vitthal Pandu Bhusare.

3 The plaintiff and defendant are relative inter-se. The defendant is youngest brother of father-in-law of plaintiff. The father-in-law of plaintiff namely Late Kisanrao had purchased 6 Acre 36 R land out of gut No.58 situated at Bazar Wahegaon, Tq. Badnapur, District-Jalna on 28/01/1974 by way of registered sale deed from Ramchandra Dadaji, resident of Malegaon, Dist-Jalna for livelihood of his family. The said property was self acquired property of the father-in-law of plaintiff. The mutation entry No.45 came to be recorded on 03/07/1974 accordingly. Out of above mentioned 6 Acre 36 R land, the land admeasuring 3 Acre 18 R was given to her husband namely Ratnakar @ Ratan Kishanrao Kharat as per mutation entry No.586 dated 09/09/1989 for his livelihood. Ratnakar Kharat had sold said land to Dadgu Jamnaji Admane and Kondiram Admane in the year 1991 and thereby 3 Acre 18 R land remained in possession

with father-in-law namely Late Kisan Chokhaji Kharat.

4 The plaintiff further submits that her father-in-law was cultivating the suit land till the year 1998 and after his death the suit land came to be recorded in the name of her husband namely Ratnakar s/o. Kisanrao Kharat and his brother namely Sahebrao Kisanrao Kharat by way of succession. Accordingly, mutation entry 1259 came to be recorded. The husband of plaintiff namely Ratnakar was having half share in the suit land which came to be transferred in the name of plaintiff after death of her husband on 12/04/2012. Accordingly, mutation entry no.2687 came to be recorded. The father-in-law of plaintiff namely Late Kisanrao is having two bothers namely Sitaram and Waman. Her father-in-law and his brother Sitaram were living at Bazar Wahegaon, Tq. Badnapur permanently whereas, the defendant was serving with the Maharashtra State Road Transport Corporation and retired from service. He is settled at Aurangabad. The land admeasuring 6 Acre 36 R was purchased by father-in-law of the plaintiff and it was self acquired property, then also the defendant threatening the plaintiff and her family members to dispossess from the suit land.

5 According to the plaintiff, defendant had filed application before Sub-Divisional Magistrate Jalna challenging mutation entry No.1259 dated 12/01/1991. However the same came to be rejected due to which defendant had preferred appeal before Additional Collector Jalna and same also rejected. Again defendant had also preferred appeal before Divisional commissioner, Aurangabad which also came to be rejected. During pendency of said appeal before

Additional Commissioner Aurangabad the defendant had filed Criminal M.A.No.22/11 against the husband of plaintiff before JMFC., Badnapur in which the court pleased to issue process against husband of plaintiff on the basis of said order. The defendant is threatening to dispossess the plaintiff from the suit land. He has also threatened to Sitaram Chokhaji Kharat who is brother of her father-in-law by pressurizing to handover the suit land. The defendant is financially very strong and intended to grab the suit land. The defendant has no any concern with the suit land, he is trying to dispossess the plaintiff from the suit land, therefore she has prima facie case, balance of convenience lies in her favour. If the application is not granted she will suffer irreparable loss. She prays to allow the application.

6 The defendant filed say (Exh.13). He denies the boundaries of suit land. He admits the relationship with plaintiff. According to defendant 6 Acre 36 Gunthe land out of Gut No.58 situated at Bazar Wahegaon is jointly purchased by the defendant and his brothers Kisan and Sitaram. Also, they have purchased land out of Gut No.252 to the extent of 2 Acre 37 Gunthe. He denies that the suit land is self acquired property of father-in-law of the plaintiff. The father-in-law of plaintiff being elder son in the family the above referred land is purchased in his name. The defendant contends that during lifetime his brother Kisan Chokhaji has never raised any dispute. Kisan Chokhaji during his lifetime i.e. in the year 1981 effected partition and accordingly, land out of gut No.58 was partitioned between Waman Chokhaji and Kisan Chokhaji to the extent of 3 Acre 18 Gunth each. The land out of Gut No.252 to the

extent of 2 Acre 37 Gunthe was given to the share of Sitaram Chokhaji and accordingly mutation entry No.294 was effected. Nobody has raised any objection to the said mutation. The defendant denies that 3 Acre 18 gunthe land was given to the share of husband of the plaintiff.

7 The defendant denies that, the father-in-law of the plaintiff i.e. his brother Kisan has partitioned 3 Acre 18 gunthas land to husband of the plaintiff. According to defendant, husband of the plaintiff sold land to his share to Dagdu Admane and Kondiram Admane. The father-in-law of plaintiff namely Kisanrao has given 3 Acre 18 gunthe land to defendant in partition. Therefore, no land remains with husband of the plaintiff. However, the husband of plaintiff prepared false documents behind the back of defendant and got mutated their name vide mutation entry No.1259. The plaintiff has no any concern with the suit land. The defendant is cultivating the suit land. The defendant has not trying to dispossess the plaintiff by any way. The plaintiff has no concern with the suit land therefore, no question arises to dispossess her. On the basis of fabricated documents the plaintiff has mutated her name on revenue record. He prays to reject the application.

8 Following points arise for determination and I have recorded my findings thereon for the reasons to follow;

POINTS

FINDINGS

- 1 Whether plaintiff has made out a .. In the affirmative prima facie case ?

- 2 Whether plaintiff proves that the balance of convenience lies in her favour ? .. In the affirmative
- 3 Whether plaintiff proves that she will suffer irreparable loss, if injunction as prayed is not granted? .. In the affirmative
- 4 What order ? .. As per final order

REASONS

9 To support the contention the plaintiff has placed on record vital set of documents (Exh.4). She has filed copy of mutation entry No.45 dated 18/01/1974, copy of mutation entry No.586 dated 22/08/1989, copy of extract of Gao Namuna dated 29/06/2010, copy of mutation entry No.1259 dated 23/12/1998, copy of 7/12 extract dated 02/06/1999, copy of 7/12 extract dated 30/08/2001, copy of 7/12 extract dated 24/08/2006, copy of 7/12 extract dated 21/07/2007, copy of mutation entry No.2687 dated 07/12/2013, copy of 7/12 extract dated 30/01/2015, copy of order of Sub-Divisional Officer (Revenue) Jalna, copy of order of Addl. District Collector, Jalna, copy of order of Addl. Commissioner, Aurangabad, Copy of Criminal Application 22/11 and copy of order dated 23/6/2014 and copy of Criminal Revision Petition No.22/15 filed before Hon'ble Court of Session Judge, Jalna.

10 To support the contention the defendant has produced on record 7/12 extract of Gut No.58 from the years 1974 to 1985 and 7/12 extract of the year 1981-82, Mutation entry No.294, Mutation entry No.586, Mutation entry No.765, Mutation entry No.1259 and Appeal preferred before Revenue Minister, Mumbai. The perusal of

7/12 extract produced by the defendant shows that from year 1981 till 1985 the father-in-law of plaintiff namely Kisanrao, the defendant and his brother Baburao were jointly cultivating 6 Acre 36 R land out of Gut No.58, situated at Bazar Wahegaon. The perusal of mutation entry no.294 shows that on 20/8/1981 the land out of Gut no.58 was partitioned between Kisan Chokhaji and the defendant to the extent of 3 Acre 18 gunthe each and land out of Gut No.252 was given to the share of his brother namely Sitaram to the extent of 2 Acre 37 Gunthas. The perusal of mutation entry 587 shows that the father of plaintiff namely Kisan has given land out of gut No.58 to the extent of 3 Acre 18 gunthe to his son namely Ratan. Perusal of mutation entry 765 shows that Ratnakar Kharat sold out the land out of Gut No.58 to the extent of 1 H. 39 R to Dagdu Jamanaji and Kondiram Jamanaji for consideration of Rs.34,000/- However, again perusal of mutation entry No.1259 shows that on 23/12/1998 3 Acre 18 gunthe land out of gut no.58 is mutated in the name of husband of the plaintiff and his brother Sahebrao after the death of their father Kisanrao Chokhaji.

11 It is important to note that the defendant contends that the husband of plaintiff namely Ratan has sold his land to Dagdu Ramanaji and Kondiram Jamanaji. The mutation entry No.765 show that the said transaction was took place in the year 1/9/1991. However, the mutation entry No.1259 is effected on 12/1/1999 after calling the objections. The said mutation entry no.1259 is of the year 1998 and mutation entry no.765 is of the year 1991.

12 The perusal of mutation entry No.45 dated 18/1/1974 shows that father-in-law of plaintiff namely Kisanrao Kharat has purchased 6 Acre 36 R land out of Gut No.58 situated at Bazar

Wahegaon from Ranchandra Dadaji R/0. Malegaon, in consideration of Rs.25,000/-. The perusal of mutation entry 586 shows that the father-in-law of plaintiff namely Kisan has partitioned 3 Acre 18 gunthe land in the name of his son, i.e. husband of the plaintiff namely Ratan. The perusal of mutation entry No.1259 shows that the husband of plaintiff namely Ratnakar and brother-in-law namely Sahebrao given application that their father Kisanrao died on 26/1/1998. Accordingly, the suit land is mutated in the name of all the legal heirs of deceased Kisanrao Kharat. On the basis of said mutation entry the names of husband of plaintiff namely Ratnakar and brother-in-law Sahebrao came to be entered on 7/12 extract of Gut No.58 over the suit land. The perusal of 7/12 extract on record shows that out of suit land half share is mutated in the name of husband of the plaintiff namely Ratnakar and brother-in-law namely Sahebrao to the extent of 69.50 each. The perusal of 7/12 extract on record shows that after death of husband of plaintiff namely Ratnakar her name came to be entered on 7/12 extract to the extent of 68 R land out of gut No.58 situated at Bazar Wahegaon.

13 The perusal of order of Sub Divisional Magistrate Jalna in file No.2009/ROR/CR-53 shows that the application filed by defendant in reference to suit property came to be rejected in respect of delay condonation. The said application was preferred regarding cancellation of mutation entry No.1259 effected in the name of husband of the plaintiff and his brother Sahebrao. Against this order the defendant has preferred appeal before Additional Collector bearing No.1011/RB/Appeal/CR-32 and said also came to be rejected on 11/10/2011. Further record shows that the defendant had also

preferred appeal before Additional Commissioner Aurangabad bearing No.ROR/REV/2/2012 which also came to be rejected in reference to cancellation of mutation entry No.1259.

14 At present mutation entry No.1259 is intact. From the revenue record on record and 7/12 extract for the year 30/1/2015 shows that the plaintiff is in possession of the suit land. The defendant has not produced on record any document to show his possession over the suit land. The defendant contends that the husband of plaintiff has sold out the land out of gut no.58 to Dagdu Admane and Kondiram Admane in the year 1991. However, mutation entry No.1259 is totally contrary to mutation entry No.765 and the said mutation entry No.1259 is remained intact after appeal filed before several revenue authorities. At present there is question regarding mutation no.765 and 1259 in reference to their correctness. To ascertain the correctness of both the mutation entries it is necessary to weigh remaining documents on record. The plaintiff has filed on record the statement of defendant dated 18/3/2012 recorded by the police. Perused it. In that statement the defendant contends that the husband of plaintiff namely Ratnakar and his brother namely Sahebrao in collusion with revenue authorities entered their names on suit property vide mutation entry No.1259. Since then, the suit land is in possession of the husband of plaintiff and his brother. Therefore, from the statement of defendant itself, it transpires that at present suit land is in possession of plaintiff. Whether mutation entry No.765 is correct or 1259 is correct, is not a criteria while deciding the application for temporary injunction. While deciding the application for temporary injunction it is required to see who is in possession of

the suit land and whether there is any obstruction from the opponent. Since the defendant has admitted the possession of the plaintiff over the suit land and simultaneously he has denied the title of plaintiff over the said land it amounts to obstruction over the suit land. Therefore, it seems that the plaintiff has prima facie case. Hence, I record my findings to point no. 1 in the affirmative .

As to Point Nos. 2 and 3

15 The defendant has admitted the possession of the plaintiff over the suit land. Her name appears on 7/12 extract. The defendant failed to establish prima facie case by showing his right over the suit land. Therefore, the balance of convenience lies in favour of the plaintiff. She is in possession of the suit land, if she is dispossessed she will suffer irreparable loss. Hence, it will be just and proper to allow the application. Therefore, I record my findings to point nos. 2 and 3 in the affirmative and in answer point no. 4, I pass following order.

ORDER

- 1) Application is allowed.
- 2) The defendant, his agents, servants, labours, representatives or anybody on his behalf are hereby temporarily restrained from interfering, obstructing and disturbing the peaceful possession over the agricultural land Gut No.58 admeasuring 69.5 R (boundaries mentioned in plaint) of the plaintiff situated at Bazar Wahegaon, Tq.Badnapur, Dist-Jalna.
- 3) Cost in cause.

Sd/-
(Smt.B.K. Patil)
Civil Judge (J.D)
Badnapur

Date: 19.03.2018