

Order Passed Below Exhibit 5 in R.C.S. No. 320/2013.

01. Plaintiff has filed an application under Order XXXIX Rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 seeking temporary injunction against defendant from causing any sort of obstruction in the property described as follows.

02. Plaintiff has given the description of property in plaint para No.1 as Revision Survey No.220 Hissa No.5 area 17 R situated at Ichalkaranji, Taluka – Hatkanangale, District – Kolhapur. The four boundaries of the property are as towards – east – road, west – the land of defendant No.4 i.e. Revision Survey No.220 Hissa No.4, to south – the land of Malgonda and Bhimgonda Patil and to north – the land of deceased Pirgonda Laxman Patil i.e. Revision Survey No.220 Hissa No.3. Here-in-after the above described property will be referred to as “suit property”.

03. According to plaintiff, the Revision Survey No.220 Hissa Nos. 1 to 5 are belonged to plaintiff, defendant and his brother. Their father Nagonda Patil had effected oral partition in Revision Survey No.220 on 8.1.1981. Hissa No.1 of Revision Survey No.220 and out of land Revision Survey No.220 Hissa No.5 area 1 R is in possession of Malgonda and Bhimgonda Jotgonda Patil. Hissa No.2 in Revision Survey No.220 and 1 R towards southern side of Hissa No.4 area 1 R is in possession of Appasaheb

Nagonda Patil i.e. defendant. The land area **0.17** R out of land Revision Survey No.**220** Hissa No.**4** is in possession of defendant and whereas, suit property is in possession of plaintiff. As per the partition, plaintiff and defendant and their brother are cultivating it. More so, their names also have been mutated in record of rights. However, on **17.8.2013** the defendant had come in suit property and obstructed plaintiffs agricultural work. More so, he threatened plaintiff to the dare consequences, if he had entered into suit property. Therefore, it has been caused to plaintiff to institute suit for permanent injunction alongwith application for temporary injunction. Further it has been stated that if temporary injunction is not passed against defendant, defendant would dispossess plaintiff from suit property. More so, plaintiff has proved prima-facie case and balance of convenience is in favour of plaintiff.

04. Defendant appeared and filed his written statement and say at Exhibit No.**11**. He has denied the case of plaintiff and contended that no property like described as suit property is in existence. The land Revision Survey No.**220** Hissa No.**5** area **18** R, and out of that area in **17** R defendant has constructed house and cattle shed towards southern side. It was given number as Ward No.**1**, House No.**631**. Further he is given domicile electric connection No. **250652012210** before the year **1998**. The same is in existence. Further it has been contended that Malgonda and Bhimgonda are nephew of plaintiff and one Shri. Appasaheb Nagonda Patil is real brother of plaintiff and defendant.

Malgonda and Bhimgonda and Appasaheb is having 1 R land in land Revision Survey No.220 Hissa No.5. However, they have not been arrayed parties to suit. Therefore, suit is not maintainable because of non-joinder of necessary parties.

05. Further it is contended that the land Hissa No.105 in Revision Survey No.220 was belonged to predecessor of plaintiff and defendant namely Late. Nagonda Patil. Late. Nagonda Patil had effected partition of this property on 8.1.1981. The memorandum of partition was written on stamp of Rs.5/-. The same was signed by plaintiff and defendant and their brother Appasaheb and nephew Malgonda and Bhimgonda Patil. However, this material fact has been suppressed by plaintiff. Therefore, he is not entitled for equitable relief. Further it is contended that it has been noted in the memorandum of partition that plaintiff and defendant are given Hissa No.4 of Revision Survey No.220 area 18 R. In fact Hissa No.4 was given to plaintiff and Hissa No.5 was given to defendant. But inadvertently the same Hissa No.4 was mentioned in name of plaintiff and defendant. After the death of Nagonda Patil the name of plaintiff, defendant and their brother Appaso were recorded in 7/12 extract to the extent of 4 Anna till the year 1998 and Hissa No.4 is in possession of plaintiff. More so, plaintiff has constructed cattle shed property in Hissa No.5 before many years. The said property has been numbered by Municipal Council as Ward No.1 Ghar No.631. Further it is contended that plaintiff has performed last rites of his son

Rajgonda and his wife in Hissa No.4 of Revision Survey No.220. This thing has also been suppressed by plaintiff. Further it is stated that defendant has paid tax of property in Revision Survey No.220 Hissa No.5 Further more he has also paid electricity bill. Besides it, he has dug 6 inch Bore in Hissa No.5. Further it is stated that plaintiff in collusion with Revenue Officer has got entered his name in 7/12 extract to the extent of 17 R. Further as per the partition deed dated 8.1.1981 Hissa No.5 is not shown in the name of plaintiff. However, plaintiff has got entered his name to Hissa No.5 of Revision Survey No.220 in 7/12 extract. Besides it, as per the partition dated 8.1.1981 Hissa No.1 of Revision Survey No.220 is shown in favour of Appasaheb Nagonda Patil. But his name is recorded to Hissa No.2 in 7/12 extract. Likewise Hissa No.2 of Revision Survey No.220 is shown in the name of Bhimrao and Malgonda Jotgonda Patil. However, their names were recorded in Hissa No.1 in 7/12 extract. Having taken the dis-advantage of wrong entries, plaintiff is trying to grab the suit property which is adjacent to road side.

06. Further it is contended that defendant is cultivating suit land since many year. He has also planted many trees. Since the year 1991 plaintiff is transporting sugarcane to Jawahar Co-operative Sugar Factory Ltd., Hupari from suit property. Whereas, plaintiff is transporting his sugarcane from Hissa No.4 to Shri. G.M. Co-operative Sugar Factory Ltd., Shirol. Further it is contended that plaintiff has not come with clean hands. He has suppressed material facts from the court. He has not proved the

prima-facie case and balance of convenience is not lies in his favour. Therefore, he requested dismissal of temporary injunction application with costs.

07. Upon hearing of both the sides and after perusal of documents produced on record, following points are arose for my determination. On which I have recorded my findings for the reasons given below them.

<u>Points</u>	<u>Findings</u>
1. Whether plaintiff has made out prima-facie case against defendant ?	--- In the affirmative.
2. Whether plaintiff proves that balance of convenience lies in his favour ?	--- In the affirmative.
3. Whether plaintiff proves that if temporary injunction order is refused, irreparable loss will be caused to him ?	--- In the affirmative.
4. What order ?	--- As per final order.

REASONS

08. In order to prove the prima-facie case, balance of convenience and irreparable loss, plaintiff has filed various 7/12 extracts, certified copies of mutation entries as well as tax assessment extract and tax receipts, water bills. Further he has filed affidavit of his brother Appaso Nagonda Patil and registered correction deed of suit property.

09. On the other hand, defendant has also filed certified copies of 7/12 extract of the year 1997-98, number of electricity bills of consumer No. 250652012210, tax receipts, partition deed dated 8.1.1981, letter of Jawahar Sugar Mill Hupari, Letter of Chief Officer, Ichalkaranji Municipal Council and affidavits alongwith number of tax assessment extracts.

As to Point Nos. 1 to 3 :-

10. Learned advocate Mr. I. M. Jamadar for plaintiff has vehemently argued that suit property is in possession of plaintiff and the same was given in his possession as per partition dated 8.1.1981. Accordingly, the partition was informed to Revenue Authority. Accordingly, mutation was sanctioned on 19.9.1998. As per the mutations the Revision Survey No.220 Hissa No.1 area 16 R and 1 R out of Hissa No.5 was recorded in the name of Malgaonda Bhimgonda Patil. Thereafter Revision Survey No.220 Hissa No.2 area 16 R and 1 R out of Hissa No.4 of Revision Survey No.220 was recorded in the name of Appaso Nagonda Patil. Then Hissa No.4 of land Revision Survey No.220 area 17 R was recorded in the name of Balgonda Patil [defendant] and Hissa No.5 of land Revision Survey No.220 area 17 R was recorded in the name of plaintiff. The said mutation has been acted upon in 7/12 extract of suit land and the same mutation entries are unchallenged till the institution of suit. Further the learned advocate has pointed out the 7/12 extract of the suit property of the year 2011-2012. Further he has pointed out the water bills and tax assessment extracts and submitted that

plaintiff has proved his possession over the suit property. Further learned advocate has pointed out the conduct of defendant while defending case of plaintiff. He has submitted that plaintiff has not suppressed any material fact indeed the partition deed dated **8.1.1981** has been produced by defendant. It shows that the original was in possession of defendant. Therefore, it can not be said that plaintiff has suppressed material fact from the court. Further learned advocate has submitted that the electricity bills as well as tax assessment produced by defendant do not reveal the possession over the suit property likewise the water bill receipts in the suit property go to show that the possession of plaintiff over the suit property. Further one more aspect that defendant has produced bogus affidavit of Appaso Nagonda Patil at Exhibit No.**25**. It does not reveal the identification of advocate. When dispute regarding this affidavit was arising in between defendant and Appaso. Then defendant handed over tore chits of photostate copies of original document of Exhibit No.**25**, the detail things have been narrated by Appaso in his affidavit filed below Exhibit No.**32**. How the bogus affidavit was made by defendant and it was shown to him the same was torn. The tore chits of affidavit which was handed over to Appaso has been produced at Exhibit No.**31** at Sr. No.**1**.

11. In so far as boundaries shown in copy of mortgage deed produced by defendant at Exhibit No.**23** at Sr. No.**52** is concerned plaintiff has made correction deed of boundaries of land Hissa No.**5** of suit property immediately in two months.

Therefore, it can not be said that plaintiff is having possession over the Hissa No.4 of Revision Survey No.220. Learned advocate has further submitted that the unchallenged revenue entries since the year 1998 till institution of suit undoubtedly have presumption of correctness unless and until it is rebutted as per Section 157 of the Maharashtra Land Revenue Code, 1966. Hence, in such circumstances, if temporary injunction is not granted defendant would dispossess plaintiff from suit property. More so, plaintiff has produced reliable documentary evidence in support of his case to prove prima-facie case. Besides it, balance of convenience is lies in favour of plaintiff. Hence, learned advocate lastly requested for grant of temporary injunction in favour of plaintiff.

12. On the other hand, learned advocate Mr. P. A. Upadhey for defendant has vehemently contended that plaintiff has not come with clean hand. He has suppressed material fact before the court. He has not given the details of partition deed dated 8.1.1981 in plaint. Besides it, the plaintiff is trying to get dis-advantage of wrong revenue entries of suit properties which are not consistent with partition deed dated 8.1.1981. Therefore, the entries can not be taken into consideration for relying the case of plaintiff. Further learned advocate has pointed out the various electricity bills and tax receipts of house No.631/1 and submitted that this categorically suggest possession of defendant over the suit property. Besides it, in mortgage deed dated 8.7.2013 plaintiff has given the four boundaries of Hissa No.4 of

Revision Survey No.220. Therefore, this only thing points out that Hissa No.4 of Revision Survey No.220 was given to the share of plaintiff and the same is in his possession. However, plaintiff has not disclosed this thing in plaint. Further learned advocate has pointed out the letter of Jawahar Sugar Factory Ltd., Hupari and submitted that the Hissa No.5 is in possession of defendant. It categorically shows the boundaries of Hissa No.5. In which sugarcane was sown by defendant. Further learned advocate has submitted that plaintiff has failed to prove prima-facie case, balance of convenience and irreparable loss. There is nothing reliable document produced by plaintiff to rely upon the possession over the suit property. Learned advocate further submitted that the sanction of mutation entry of the year 1998 has been challenged by defendant and defendant has categorically rebutted the presumption of revenue entries. Therefore, plaintiff can not be said to have proved prima-facie case against defendant. Further learned advocate has submitted that correction deed of mortgage dated 8.7.2013 has been made after institution of suit. Besides it Appaso has initially filed affidavit in favour of defendant. But now he turned hostile and false allegations against defendant are made in affidavit filed on behalf of plaintiff. On these grounds learned advocate has requested dismissal of temporary injunction application.

13. I have given the thoughtful consideration to the argument advanced by both the sides and documents placed on record. The short question arises in the present application about

the possession of suit property i.e. Hissa No.5 of Revision Survey No.220. In support of possession over the suit property, plaintiff has placed on record the 7/12 extracts as well as certified copy of sanctioned mutation entry dated 19.9.1998. Further more he has placed on record the tax assessment extracts of house No. 631/E and affidavit of his brother Appaso alongwith water bills. On the other hand, defendant has placed on record, to prove prima-facie possession over the suit property and rebut the case of plaintiff, the 7/12 extract prior to 1998, tax assessment extracts of house No.631/E and various tax receipts and electricity bills alongwith mortgage deed dated 8.7.2013 and partition deed dated 8.1.1981 and certificate of Chief Officer, Municipal Council, Ichalkaranji dated 28.8.2013, and letter of Jawahar Sugar Factory Ltd., Hupari dated 28.8.2013.

14. Admittedly the suit property was belonged to Nagonda Patil i.e. father of plaintiff and defendant. Admittedly partition was effected on 8.1.1981. So, now it would relevant to scrutinize documents placed on record to hold the prima-facie possession of suit property. According to plaintiff, Hissa No.5 of Revision Survey No.220 was given to him in oral partition dated 8.1.1981. According to him, the mode of partition was oral. To support these pleas, plaintiff has relied upon the mutation in revenue record of Revision Survey No.220 Hissa No.5 alongwith other documents. On the other hand, defendant has come with the case that the partition deed dated 8.1.1981 was not oral, but it was reduced into writing on stamp of Rs.5/- and Hissa No.4 of

land Revision Survey No.220 was given to plaintiff and Hissa No. 5 was given to him. However, plaintiff has in collusion with Revenue Officer got sanctioned wrong mutation entries in 7/12 extract of Hissa No.5 of Revision Survey No.220. In supporting of these pleas he has produced original partition deed below Exhibit No.23/51.

15. At this stage, certainly mutation entry dated 19.09.1998 of Hissa No.5 of Revision Survey No.220 and 7/12 extract of Hissa No.5 and 7/12 extract made thereafter by concerned revenue authority and partition deed dated 8.1.1981 bears more importance. Prima-facie from the mutation entry of the year 1998 and revenue record of Hissa No.5 of the Revision Survey No.220 suggest the possession of plaintiff over the suit property. Now the claim of defendant over the suit property, on the basis of electricity bills, partition deed and tax assessment extracts, is that the Hissa No.5 was given to him and Hissa No.4 of land Revision Survey No.220 was given to plaintiff. However, inadvertently partition deed dated 8.1.1981 does not disclose the share of Hissa No.5 to defendant, but it was wrongly mentioned in partition deed that the Hissa No.4 of 220 was given to him. Further the same Hissa No.4 was given to plaintiff in the said partition deed. In fact, Hissa No.5 was given to defendant and Hissa No.4 was given to plaintiff.

16. It is pertinent to note that the partition deed has been produced by plaintiff on record and it was in his

possession since **1981**. Further the mutation of suit property was effected in the year **1998** and thereafter revenue record of suit property was made by revenue authority. The same are in effective till the institution of suit prima-facie, it seems to me that defendant has taken this defence/plea after laps of near about **35** years from the date of partition deed which has been produced by him. In the partition deed the Hissa No.4 of land Revision Survey No.220 is categorically shown to be the share of defendant. Besides it, on the basis of this deed the mutation was effected in the year **1998** and the same was enforced thereafter in regard to suit property. Even then defendant was reluctant to object the said sanction of mutation entry of Hissa No.5 of **220** in the name of plaintiff. No doubt, the mutation entry of the year **1998** is inconsistent with the contents of memorandum of partition deed dated **8.1.1981**. But the said entries have not been challenged since the year **1998** to institution of suit i.e. till the year **2013**. It is surprising why the defendant did not come forward and object the revenue record of suit property when the original deed was in his possession. Keeping silence and not taking objection to the sanction of mutation entry for near about **15** years, further keeping the partition deed dated **8.1.1981** without correction for **35** years, certainly, at this stage, suggest admission of record of rights of cultivation and possession of Hissa No.5 of land Revision Survey No.220 in the name of plaintiff. Therefore, the partition deed is prima-facie not helpful to defendant's case as against the revenue record of Hissa No.5 of Revision Survey No.220. On the other hand, partition deed

dated **8.1.1981** discloses the Hissa No.4 of Revision Survey No.220 was given to defendant and it corroborates the mutation entry of the year **1998**.

17. Now as regards to the water receipts at Exhibit No.31 at Sr. Nos. **13** to **15** categorically suggest the Hissa No.5 of land Revision Survey No.220 was surveyed by irrigation department and the name of plaintiff was confirmed for water supply by irrigation department. Title of both the water receipts at Exhibit No.31 at Sr. Nos. **14** and **15** shows the holding of plaintiff over Hissa No.5 of **220** was sanctioned by irrigation department for water supply and intimation was given to the Talathi. These things also corroborates the case of plaintiff about the possession of suit property.

18. On the other hand, defendant has placed tax assessment extract and tax receipts of house No. **1/631**. Further he has produced electricity bills of consumer connection No. **250652012210** to show that the above described connection has been given in property No.1/631. Further he has placed the certificate of Chief Officer, Municipal Council, Ichalkaranji which suggest that property No. **1/631** constructed in Hissa No.5 of Revision Survey No.220 and the same is standing in the name of defendant. Even he has filed the letter of Jawahar Co-operative Sugar Factory Ltd., Hupari disclosing four boundaries of suit property and possession of defendant over the suit property.

19. No doubt all these documents suggest that property No. **1/631** is situated in Hissa No.5 of Revision Survey No.220. However, there is no explanation when this property was constructed by defendant. Admittedly, till the year **1998** as per the record of **7/12** extract the Hissa No.5 was under joint cultivation. More over, as per the copy of affidavit produced vide list at Exhibit No.23/61, the defendant was given consent by plaintiff and his brother Appaso on **30.7.1998** to obtain electricity connection in his name in Hissa No.5 of land Revision Survey No.220. Even in the said affidavit the plaintiff and others have taken responsibility to make payment of electricity bill Etc. of the electricity supply. This itself suggest that neither the Hissa No.5 of Revision Survey No.220 was given to share of defendant on **3.8.1998** and nor it was under separate cultivation of defendant. After this affidavit mutation entry was effected and Hissa No.5 was recorded in the name of plaintiff and Hissa No.4 of Revision Survey No.220 was recorded in the name of defendant. So, it is quite unacceptable the theory of defendant that Hissa No.5 was under his separate cultivation and he had constructed enclosed house with cattle shed and his name was recorded in the tax assessment extract since the year **1988** and suit property is in his possession since the year **1991**. Even if it is accepted that the property No.1/631 is situated in suit property and tax assessment and electricity bills are in the name of defendant, all these documents can not be said to be proof of possession over the entire suit property by defendant. These documents are only restricted to the constructed area of

enclosed premises. The record of this constructed premises which has been kept by Municipal Council in any manner does not relevant with rest of land area of Hissa No.5 of Revision Survey No.220. Admittedly, the suit property is agricultural land and the record of agricultural land is mandatorily kept by revenue authority. Therefore, the record of suit land kept by revenue authority are acceptable at this juncture in proof of possession over the suit property. And this record is in the name of plaintiff. Besides it, defendant has placed on record the letter of Jawahar Co-operative Sugar Factory Ltd., Hupari dated **28.8.2013** vide list Exhibit No.23/58. The said document seems to have been obtained after institution of suit. No doubt the certificate disclose the boundaries of Revision Survey No.220. It does not disclose the Hissa No.5. Further this letter was given to defendant on condition that it should not be used as evidence in any matter as it was made for the convenience of transporting sugarcane. In spite of this condition mentioned in this letter, the same has been produced on record. Therefore, the same is liable to be kept aside from consideration.

20. In my considered opinion conduct is very material aspect in Court proceeding. In the present case, defendant has filed affidavit of his brother Appaso Patil, dated **29.8.2013** vide Exhibit No.25 on **16.4.2015**. The copy of the said affidavit was in possession of defendant till **16.4.2015**. The said affidavit has been filed in rebuttal of the affidavit of Appaso which has been filed on behalf of plaintiff at Exhibit No.20. The affidavit of Appaso

which has been filed by defendant is neither identified and nor verified by advocate. However, the affidavit of Appaso which has been filed by plaintiff is verified and identified by advocate. Both the affidavits of Appasaheb run counter to each other in regard to the possession of suit property and partition. When affidavit of Appasaheb was filed by the defendant on **16.4.2015**, Appasaheb came forward with affidavit stating that the alleged affidavit of his name supporting the case of defendant and which has been filed is quite bogus and false. It does not bear his signature and the same is fabricated. He has stated that when the fact of bogus affidavit came to know him, immediately he inquired the same fact with defendant, and on that count dispute was arisen in between them. Thereafter defendant had torn the alleged affidavit and handed over the pieces of torn affidavit to him. It is further stated by him that defendant did mischief with him having tore the photostate copy of alleged affidavit and the pieces of that photostate copy had given to him for believing that the original had been torn by him. He has produced the pieces of affidavit which are affixed by gum vide below Exhibit No. **31/1**. When I compared these affixed chits of alleged affidavit alongwith the copy of affidavit filed by defendant, the same are categorically identical to each other. The affidavit which was tore seems to have been photostate copy of alleged affidavit filed on behalf of defendant. From these circumstances prima-facie I find much substance in the submission of plaintiff that defendant has done grave mischief and gone to lower level in defence to the case.

21. Admittedly from the copy of R.C.S. No. 403/2014 filed by defendant vide Exhibit No.35/6, it appears present plaintiff and his brother Appasaheb has instituted suit against defendant for different properties for partition. It leads the relation in between Appaso and present defendant was strained. In such circumstances, it is quite unacceptable that Appaso made alleged affidavit in support of defendant. Further it is quite unacceptable that Appaso obtained photostate copy instead of xerox.

22. It is pertinent to note that the alleged affidavit was not filed in the Court on the date when it was made on the side of defendant. This thing certainly leads serious doubt in manner of defence by defendant. Apart from the grounds as discussed in earlier para, the prima-facie defence of the defendant is liable to be rejected on this ground only. At this stage, it seems to me that defendant has not come with clean hands in defending the case against plaintiff. The rule of clean hand and suppression of material fact is equally applicable to defendant also. These rules are not restricted to the plaintiff's side alone, but are applicable to parties to suit. In so far as the mortgage deed of Hissa No.5, the plaintiff has filed the correction of boundaries deed of Hissa No.5. Therefore, the aspect of mortgage deed is not also helpful to defendant. The case laws produced by defendant, with respect, are not applicable in the present matter in view of facts and circumstances in the present matter.

23. So for the reasons stated above, I have no hesitation to hold that plaintiff has proved prima-facie case, balance of convenience and irreparable loss. Consequently, I have recorded my finding on point Nos. 1 to 3 in the affirmative. In result, I proceed to pass the following order.

-: ORDER :-

1. Application Exhibit No.5 is allowed.
2. Defendant, his agent or anybody claiming through him is hereby temporarily restrained not to obstruct in peaceful possession of plaintiff over the suit property i.e. Hissa No.5 of Revision Survey No.220 area 17 R till the final disposal of suit.
3. No order as to costs.

Sd/-

Date :- 22nd April, 2015.

(A. D. Ghuge)

3rd Jt. Civil Judge Jr. Dn.,
Ichalkaranji, Dist. Kolhapur.

Exhibit No.5 transcribed and checked on 24.4.2015.

Sd/-

Date :- 24th April, 2015.

(A. D. Ghuge)

3rd Jt. Civil Judge, Jr. Dn.,
Ichalkaranji, Dist. Kolhapur.

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer :- Sachin Narayan Salokhe.
Name of Court :- Shri. A.D.Ghuge, 3rd Jt. CJJD & JMFC,
Ichalkaranji, District - Kolhapur.
Date of Dictation :- 22. 04. 2015 to 24. 04. 2015
Order signed by the P.O. on :- 24. 04. 2015.
Order uploaded on :- 24. 04. 2015.