

:: ORDER BELOW EXH. 5 ::

Perused the application, plaint, written statement-cum-say at Exh.20, affidavits of witnesses and documents filed on the record by both the parties. Heard learned advocates for both the parties.

2) On the pleadings of both the parties and submissions made by learned Adv. S. D. Bhosale for the plaintiff and Adv. G. T. Thakur for the defendant nos.1 to 4, following points arise for determination and my findings are against each point for the reasons given below.

<u>Points</u>	<u>Findings</u>
1] Whether plaintiff has made out existence of prima facie case in his favour ?	: Yes
2] Whether balance of convenience lies in his favour ?	: Yes
3] Whether irreparable loss would be caused to the plaintiff, if injunction is not granted ?	: Yes
4] What order ?	: As per final order.

REASONS

As to point nos. 1 to 3 :

3) In order to sustain an order of temporary injunction

under Order 39, Rule (1)(c) of the Code of Civil Procedure, it is for the plaintiff to establish that he has prima-facie case for grant of temporary injunction as prayed for, that he would suffer irreparable loss, if temporary injunction as prayed is refused ; and that balance of convenience lies in his favour. All these three aspects are based on law of equity. The relief of temporary injunction is the discretionary one. The plaintiff has come with the case that he is in possession of the suit property and defendants are causing obstruction to his peaceful possession over the suit property. The case of plaintiff has been seriously disputed by defendants. Hence, here the only core question is required to be seen, as to whether the plaintiff has prima-facie case and in possession of the suit property ?

4) At the outset, reference is required to be made to the 7/12 extracts of the suit property at Exh.7, wherefrom it reveals that the names of plaintiff is appearing in the cultivation column of the suit property since the year 2004-05 till the date of suit. Furthermore, from the xerox copies of 7/12 extracts with list at Exh. 30, it reveals that the father of the plaintiff was in possession of the suit property since the year 1959-60 till 1971-72 and it further reveals that the name of the plaintiff is mutated in the cultivation column of the suit property since the year 1972-73 upto the year 2014-15. At this juncture, the possession of the plaintiff over the suit property on the date of suit is established.

5) Having considered all these aspects, it is seen that the plaintiff has succeeded to show prima-facie case that he is in possession of the suit property. Thus, the law of equity favours the

plaintiff. Since, the plaintiff is seen in possession of suit property. There is no question of irreparable loss being caused to the defendants, if injunction is granted and as such there is no balance of convenience lying in defendants' favour. Hence, all the points are answered in the affirmative. In the conclusion, I pass the following order.

:: ORDER ::

- i] Application is allowed.
- ii] The defendants, their agents or any other person on their behalf are hereby restrained temporarily from causing obstruction to the peaceful possession of the plaintiff over the suit property till final disposal of the suit.
- iii] Costs in cause.

Sd/-

Civil Judge Junior Division,
Gargoti

Date : 19/03/2015

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	:	Mr. S. D. Sarang
Name of Court	:	Court of Civil Judge Junior Division, Gargoti, Tah. - Bhudargad, District - Kolhapur
Date of Dictation	:	19/03/2015
Order signed by the P.O. on	:	19/03/2015
Order uploaded on	:	19/03/2015