

:: ORDER BELOW EXH. 5 IN REG. CIVIL SUIT NO. 44/2013 ::

Perused the application, plaint, written statement & say filed by the defendants at Exh. 17 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. K. T. Patil for the plaintiffs and Adv. G. T. Thakur for the defendants, 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 plaintiffs have made out existence of prima facie case in his favour ?	: Yes
2] Whether balance of convenience lies in their favour ?	: Yes
3] Whether irreparable loss would be caused to the plaintiffs, 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 plaintiffs to establish that they have prima-facie case for grant

of temporary injunction as prayed for, that they would suffer irreparable loss, if temporary injunction as prayed is refused ; and that balance of convenience lies in their favour. All these three aspects are based on law of equity. The relief of temporary injunction is the discretionary one.

4) The plaintiffs have come with the case that the suit property is in their possession since the year 1970-71 and they are cultivating the same. Accordingly, the name of deceased mother of defendant nos. 1 to 3 is mutated in the cultivation column of the suit property since the year 1972-73. As per the plaintiff, her mother passed away on 05/04/2011. The case of plaintiffs is seriously disputed by the defendants and defendants are also claiming to be in possession of the suit property. Hence, here the only core question is required to be seen, as to whether the plaintiffs have prima-facie case and in possession of the suit property ?

5) At the outset, reference is required to be made to the 7/12 extracts of the suit property at Exh. 7, 25 & 26, wherefrom it reveals that the name of deceased Shantabai i.e. the mother of defendant nos. 1 to 3 and wife of defendant no. 4 is appearing in the cultivation column of the suit property since the year 1972 till 2013 while the name of defendants are appearing in the ownership column. Next in order comes the panchanama prepared by Talathi and Circle Officer dated 04/06/2010 wherein it is observed that the suit properties is in possession of the deceased Shantabai since the year 1973. Furthermore, the documents produced by both the parties show that litigations are pending before the Revenue

Authorities between both the parties. Both the parties produced on record sugarcane transportation receipts. The plaintiffs have filed affidavits of witnesses in support of Exh. 5. However, the defendants have not filed counter-affidavits. Though the names of defendants appearing in the ownership column, they failed to establish their possession over the suit property. On the contrary, the possession of the plaintiffs is appearing from the documents and affidavits available on record. No doubt, the mother of plaintiff nos. 1 to 3 is expired and her name is still appearing in the cultivation column, however, if really, the defendants are in possession, then why their names are not appearing in the cultivation column, is not answered by them. At this juncture, the theory put up by the plaintiffs appears to be more probable than the case of the defendants. Therefore, the contentions raised by the defendants about their possession over the suit property are not acceptable at this juncture.

6) At this juncture, the possession of the plaintiffs over the suit property on the date of suit is established. Therefore, at this juncture, the plaintiffs have sufficiently established their possession over the suit property. At this juncture, the theory put up by the plaintiffs appears to be more probable than the theory put up by the plaintiffs. In civil case, degree of proof is preponderance of probabilities.

7) Having considered all these aspects, it is seen that the plaintiffs have succeeded to show prima-facie case that they are in possession of the suit property. Thus, the law of equity favours the plaintiffs. Since, the plaintiffs are 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 plaintiffs over the suit property till final disposal of the suit. They are further restrained from ousting the plaintiffs from the suit property without following the due procedure of law till final disposal of the suit.
- iii] Costs in cause.

Sd/-

Civil Judge Junior Division,
Gargoti

Date : 01/12/2014