

**:: ORDER BELOW EXH. 5 ::**

Perused the application, say-cum-written statement (Exh.27) filed by the defendants. Perused the documents placed on record. Heard both sides. Through this application, the plaintiffs are seeking temporary injunction restraining the defendant from disturbing his possession over the land Gat No.218 to the extent of 9 H. 64 R., Pot kharab 0.07 R., situated at Mouje Mhasarang, Taluka Bhudargad, District Kolhapur, which is more particularly described in the application (Hereinafter referred to as "the suit property").

2) Points for determination and findings thereon alongwith reasons stated thereto are as under :

<b><u>Points</u></b>	<b><u>Findings</u></b>
1] Whether the plaintiffs have made out prima-facie case ?	: In the affirmative
2] Whether there is balance of convenience in favour of the plaintiffs ?	: In the affirmative
3] Whether irreparable loss will be caused to the plaintiffs, if the application is not allowed ?	: In the affirmative.
4] What order ?	: The application is allowed.

## **REASONS**

### **As to point nos. 1 to 3 :**

3) Herein, it is the contention of the plaintiffs that they are the owners and possessors of the suit property. On the southern and eastern side of the suit property, there is a land Gat No.219 owned by the defendants. The defendants are not having any concern with the suit property. However, they are disturbing their possession over the suit property. On 07/03/2015, the defendants removed the boundary marks. On 15/05/2015, the defendants raised objection to their possession over the suit property.

4) On the other hand, it is the contention of the defendants that in the year 2004, they got measured land Gat No.219 through T.I.L.R. In the measurement, it is revealed that some of the portion of land Gat No.219 is in the possession of the plaintiffs. Thereafter, the plaintiffs handed-over the said portion to them. On 07/03/2015, the defendants divided the land Gat No.219 amongst themselves. At that time, the plaintiffs were intending to grab the some of the portion of the land Gat No.219. They have never removed the boundary marks. The entire allegations made in the plaint are false.

5) The afore-mentioned pleadings makes clear that both the parties are not disputing about their respective ownership

over their respective lands. The defendants are not challenging the ownership of the plaintiffs. The 7/12 extract of land Gat No.218 also shows that the plaintiffs are the owners of the suit property.

6) The question of controversy is about the alleged interference at the hands of defendants to the possession of the plaintiffs over the suit property. According to the plaintiffs, the defendants are trying to disturb their possession over the suit property. The defendants denied the said fact. However, at this stage, I do find weight in the contentions of the plaintiff because the contentions of the plaintiffs are supported by Dhondiram Sitaram Mangale, Sitaram Dattatray Desai, Dhondubai Krushna Ravul, Bhikaji Shankar Pandare in their affidavits placed on record. Learned advocate of the defendants submits that the defendants never caused obstruction to the possession of the plaintiffs over the suit property. In spite of that, the plaintiffs are claiming fancy relief against the defendants. However, I do not agree with the said submissions because as above discussed, the contentions of the plaintiffs are supported by independent villagers of village Mhasarang.

7) If during the pendency of the present suit, the defendants disturb the possession of the plaintiffs over the suit property, then the plaintiffs will suffer hardship and irreparable loss. On the other hand, if the defendants are restrained from disturbing the possession of the plaintiffs over the suit property,

then the defendants will not suffer comparatively more hardship and irreparable loss. In all these circumstances, it is clear that there is a prima-facie case in favour of the plaintiffs. The balance of convenience is also in favour of the plaintiffs and irreparable loss will be caused to them, if the application is not allowed. Hence, I answer point nos.1 to 3 in the affirmative.

**As to point no.4 :**

8) In view of affirmative findings to the point nos.1 to 3, the application will have to be allowed and the defendants or any person acting on behalf of them, will have to be restrained from disturbing the possession of the plaintiff over the suit property till the conclusion of the suit. Accordingly, I answer point no. 4 and pass the following order .

**:: ORDER ::**

- 1] The application is allowed.
- 2] The defendants or any other person acting on behalf of them are restrained from disturbing the possession of the plaintiffs over the suit property till the conclusion of the suit.

**Sd/-**

Gargoti  
Date : 20/09/2016

( S. S. Parave )  
Civil Judge Junior Division,  
Gargoti

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	:	20/09/2016
Order signed by the P.O. on	:	20/09/2016
Order uploaded on	:	20/09/2016