

**:: ORDER BELOW EXH. 5 IN REG. CIVIL SUIT NO. 105/2012 ::**

The instant application is under Order 39, Rules 1 and 2 of The Civil Procedure Code, seeking injunction restraining the defendant nos. 1 to 3 and 7 from causing obstruction to the peaceful joint possession of the plaintiff over ½ share situated on the eastern side, from erecting any construction thereon, alienation or creating charge on the suit property.

**Description of the suit property :**

2) The agricultural land bearing Block No.160/2 admeasuring 07H=01.4R, Assessed at Rs. 04=78 Ps. situated within the ambit of Village Patgaon, Tah. Bhudargad, Dist. Kolhapur. This is the property involved in the case in hand. Herein-after referred as "the suit property" for the sake of brevity

**Factual background of the case in brief :**

3) The present suit is for partition, possession, permanent injunction and declaration. According to the plaintiff, the suit property is the ancestral and joint family property of him and defendant nos. 1 to 6. As the suit property is owned and possessed by them as a joint family property, the name of deceased Babaji i.e. father of defendant nos. 1 to 5 is mutated to the suit property as a manager of the family. The defendants have taken disadvantage of the illiteracy of the plaintiff and in order to avoid the share of the plaintiff in the suit property, his name was deleted from the 7/12 extract and names of defendant

nos. 1 to 5 are mutated to the suit property behind his back after the demise of deceased Babaji Raut. Plaintiff contended that he is having 1/3<sup>rd</sup> joint share in the suit property. However, he is in possession of the ½ share in the suit property on the eastern side and accordingly, he is cultivating and raising the crops in the suit property.

**Facts giving rise to File the present application in brief are as follows :**

4) According to the plaintiff, as the partition is not taken place between both the parties, he asked to the defendants however, they avoid for the same. Therefore, on 05/05/2012, he issued notice in favour of defendants but they have not taken any action regarding to the partition. Furthermore, defendants are trying to obstruct his peaceful possession over the suit property and trying to dispossess him. Thereafter, on 06/06/2012, defendant nos. 1 and 2 alongwith their sons entered into the suit property and assaulted to the plaintiff and his son. On 27/06/2011, defendant no. 7 purchased the 80 R. land out of the suit property from the rest of the defendants and he is also causing obstruction to the possession of the plaintiff over the suit property. Therefore, he has filed the present suit and prayed for granting temporary injunction against the defendants.

5) The defendant nos. 1 to 3 and 7 by filing their joint written statement and say at Exh. 31 contested the application, categorically denying all the allegations in the plaint. According

to the defendants, the suit property is purchased by Babaji Raut i.e. father of defendant nos. 1 to 5. The present suit is filed only to harrash the defendants. The plaintiff is not in possession of the suit property. He has no concern with the suit property. The defendant no. 7 is the bonafide purchaser. The instant application is filed by the plaintiff with malafide intention just to harass them. Plaintiff has no prima facie case and claim of injunction is clearly colourable one and if the injunction is issued then plaintiff would certainly may misuse the order and lastly prayed for rejection of application at Exh. 5.

6) On the pleadings of both the parties and submissions made by learned Adv. Y. P. Ugave for the plaintiff and learned Adv. P. B. Sapale 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 the plaintiff has prima facie case for grant of temporary injunction as prayed for ?	: Yes
2] Whether the plaintiff would suffer irreparable loss, if temporary injunction is refused ?	: Yes
3] Whether the balance of convenience lies in favour of plaintiff ?	: Yes
4] What order ?	: Application is allowed

**:: REASONS ::**

**As to point nos.1 to 4 :**

7) In order to sustain an order of temporary injunction under order 39 Rule (1)(c) of The Civil Procedure Code, 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.

8) The plaintiff has come with the case that, defendants are obstructing to his peaceful  $\frac{1}{2}$  possession on the eastern side over the suit property. The case of plaintiff has been seriously disputed by the 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 and whether the defendants are obstructing to the peaceful possession of the plaintiff over the suit property ?

9) At the outset, reference is required to be made to the statement of deceased Babu Rama Raut i.e. father of defendant nos. 1 to 5 and statement of plaintiff recorded before Tahasildar on 22/11/1985 wherefrom it reveals that the suit property is owned by deceased Babu Rama Raut and plaintiff is cultivating

the ½ share of the suit property. The order of Tahasildar, Bhudargad in R.T.S./14D/Patgaon/85 shows that Tahasildar, Bhudargad directed to mutate the name of plaintiff and deceased Babu to the 1/2 share in the cultivation column of the suit property.

10) Next in order comes the 7/12 extract of the suit property at Exh. 6, 11 and with list at Exh. 34 at Sr. Nos. 1 and 2, wherefrom it transpires that, the name of plaintiff is mutated in the cultivation column of the suit property to the ½ share since 1985-86 till 2012-13. Therefore, one thing is clear that the plaintiff is in possession of the suit property to the extent of ½ share. Admittedly, the entries in the revenue record are for fiscal purpose for collection of revenue and having rebuttable presumption. At this juncture, the plaintiff is succeeded to rebut the presumption claimed by the defendants. Admittedly, the entries in the 7/12 extract as discussed above are corroborating to the contention of the plaintiff that he is in possession of the ½ share of the suit property. Furthermore, it is not challenged or set-aside by any appellate authority till today as seen from the documents placed on record, therefore, it's contents are deserves to be accepted by overlooking the allegations made by the defendants.

11) At this juncture, it is seen that the plaintiff is in possession of ½ share in the suit property on the basis of entries in the cultivation column of the 7/12 extract and it also

corroborate to the possession of the plaintiff over the suit property.

12) Learned Adv. Y. P. Ugave for the plaintiff relied upon the judgment of Hon'ble Apex Court reported in the case of "Gangubai Choudhari V/s. Sitaram Sukhatankar - AIR 1983 SC 742" wherein Hon'ble Apex Court held that when plaintiff and defendant found to be in possession of about ½ portion of disputed land, injunction restraining defendant from putting the construction on entire land would be justified as situation might become irreversible by the time dispute is decided, if injunction is not granted. Learned advocate for the plaintiff further relied upon the judgment of Hon'ble Karnataka High Court reported in the case of "Chinnamma V/s. N.Nagraj-AIR 1996 Karnataka 11" wherein Hon'ble Karnataka High Court held that temporary injunction is necessary in cases of agricultural and HUF properties where there is likelihood of certain changes in character of immovable properties during interim period. Learned advocate for the plaintiff further relied upon the judgment of Hon'ble Madras High Court reported in the case of "Balasubramanian V/s. Nagalingam - AIR 1996 Madras 146" wherein Hon'ble Madras High Court held that when a suit for partition is pending and co-sharer claiming injunction restraining the purchasers of part of suit property from interfering with their joint possession and purchaser failed to show his actual possession, then he cannot disturb joint

possession being stranger to family. In the case in hand also, the sale deed of the defendant no. 7 is not filed on record. Furthermore, he failed to show his possession. Therefore, the above mentioned case-law is perfectly applicable to the case in hand. Learned advocate for the plaintiff further relied upon the judgment of Hon'ble Calcutta High Court reported in the case of “Ashim Ranjan Das V/s. Sm. Bimla Ghosh – AIR 1992 Calcutta 44” wherein Hon'ble Calcutta High Court held that stranger purchaser is to be restrained from entering into possession of undivided share in family. Learned advocate for the plaintiff further relied upon the judgment of Hon'ble Bombay High Court reported in the case of “Santosh Annaji Deshmukh V/s. Rambhau Bhauji Deshmukh – 2010 (6) All M.R. 148” wherein Hon'ble Bombay High Court held that the plea of self-acquisition i.e. the property was acquired by party is acquired by him without the aid of nucleus is on the party, who asserts it. All the above discussed case-laws and observations made therein are perfectly applicable to the case in hand.

13) Learned Adv. P. B. Sapale for the defendants relied upon the judgment of Hon'ble Apex Court reported in the case of “Smt. Chandrakantaben J. Modi V/s. Vadilal Bapalal Modi - AIR 1989 SC 1269” wherein Hon'ble Apex Court held that the presumption on the basis of revenue entry was in respect of possession only and not as to title. In the case in hand also, the entries in the cultivation column of 7/12 extract of the suit

property clearly goes to show that the plaintiff is in possession of the ½ portion of the suit property. Therefore, at this juncture, the case-law relied upon by the defendants is applicable and strengthening the case of plaintiff. Learned advocates for the defendants further relied upon the judgment of Hon'ble Apex Court reported in the case of "M. Kallappa Setty V/s. M. V. Laxminarayana Rao - AIR 1972 SC 2299" wherein Hon'ble Apex Court held that when the plaintiff is in possession of the suit property, he can resist interference from the defendant from disturbing his possession, who has no better title than himself and get injunction. Learned advocate for the defendants relied upon the judgment of Hon'ble Bombay High Court reported in the case of "Ganesh D. Daivajna V/s. Prakash S. Salkar - 2000 (3) Mh.L.J. 347" wherein Hon'ble Bombay High Court held that possession ought to be lawful to enable party to seek protection by way of equitable relief of injunction. From the 7/12 extracts of the suit property, prima-facie, plaintiff appears to be in possession of the suit property since the year 1985 to 2013. Therefore, at this juncture, his possession appears to be lawful. Therefore, all the case-laws relied upon by the defendants are not applicable to the defence of defendants.

14) Having considered all these aspects, it is seen that the plaintiff has succeeded to show prima-facie case that he is in possession of ½ share in 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 point are answered in the affirmative. In the result, I proceed to pass the following order.

**:: ORDER ::**

- 1] Application is allowed.
- 2] The defendants, their agents or any other person on their behalf are hereby restrained from obstructing the peaceful possession of the plaintiff over the suit property till final decision of the suit.
- 3] The defendants, their agents or any other person on their behalf are further restrained from alienating or creating any charge or erecting any construction over the suit property till final decision of the suit.

Gargoti  
Date : 30/01/2014

**Sd/-**  
( G. M. Charankar )  
Civil Judge Junior Division,  
Gargoti