

**Order passed below Exh.5 in R.C.S.No.7/2012**

**01.** This application is filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure for restraining defendant No.1 from ousting and obstructing the possession of the plaintiff over the suit property, more particularly described in Para No.1 of the Plaint.

**02.** The defendant No.1 has filed say-cum-written statement vide Exh.22 and resisted application. The defendant No.2 filed his say at Exh.17.

**03.** On the basis of contentions of the parties, following points are arise for determination and I have recorded my findings thereon with reasons as follows.

<b><u>Points</u></b>	<b><u>Findings</u></b>
1. Whether plaintiff has made out prima-facie case ?	.... Negative.
2. Whether the balance of convenience is lies in favour of plaintiff ?	... Negative.
3. Whether hardship would caused to defendants, if application is allowed ?	... Affirmative.
4. What order ?	.... As per order.

**= REASONS =**

**04.** I have heard learned counsel for plaintiff and defendants.

**As to the Points No.1 to 3 :-**

**05.** I have gone through the pleadings of the suit and documents relied upon by plaintiff vide Exh.3 and 29 It is the matter of record that ad-interim injunction was granted in favour of plaintiff and against defendants on 13-01-2012 till appearance and extended accordingly.The defendant No.1

appeared on 16-12-2013 and filed reply and written statement and thereby resisted application. I have given my anxious consideration to the pleadings of the suit and documents relied upon by the respective parties. The plaintiff has claimed to be owner and joint possessor of Gat No.306, admeasuring about 2 H.93.8 R.with pot kharab 0.08 R and out of that property 11 anna 6 paisa share and whereof boundaries are mentioned in the description of property which is subject matter of the suit.

**06.** It is contended by the plaintiff that the suit property was originally owned by the husband of defendant No.2 – Kondiba Jyoti Mendake, who died on 08-10-1988 without issue. The Kondiba Mendake had no issue, therefore, the father of the plaintiff namely Balaso Ramchandra Tilawe was maintaining them. The Balaso Tilawe is real brother of defendant No.2 and he has expressed desire to adopt plaintiff. Accordingly on 11-11-1991, defendant No.2 had performed adoption and accordingly registered bearing No.1754 on 11-11-1991. It is contended by the plaintiff that he has become adoptive son of defendant No.2 and deceased Kondiba Mendake, therefore, by virtue of said relation, he was in joint possession and in share of the suit property.

**07.** It is contended by the plaintiff that he was cultivating the property alongwith defendant No.2 by holding joint possession and cultivating property through original father Balaso Tilwe. Since the defendant No.2 unnecessarily disputing with the plaintiff, therefore, plaintiff had started to reside at Chimgaon and maintaining defendant No.2. According to the plaintiff, the dependent No.2 has executed bogus sale deed in respect of the suit property at Murgud on 08-07-2011. In spite of

knowledge of adoption of plaintiff, the defendant No.1 started obstruction and ousting the plaintiff from the agricultural property and house property and therefore, plaintiff had filed RCS No.92/2011 for injunction.

**08.** It is contended by the plaintiff that in spite of appearance of defendant, the defendant No.1 and 2 had executed bogus sale deed on 30-12-2011 without authority and without possession in favour of defendant No.1. According to plaintiff that he is adoptive son and therefore having 1/2<sup>th</sup> share and joint possession over the property. The transaction of defendant No.1 is illegal whereby no possession was parted with the defendant. Therefore, plaintiff prayed for injunction against defendant No.1.

**09.** The defendant came with the case that the suit property is in possession of defendant No.2 – Smt.Muktabai Kondiba Mendake and plaintiff had filed R.C.S.No.92/2011 for injunction and application has been rejected. The defendant denied all the contentions of plaintiff as regards the execution of adoption deed. It is contended by the defendant that defendant No.2 has executed sale deed on 31-12-2011 and paid consideration of Rs. 10,20,000/- and delivered the possession of suit property to this defendant No.1 on 31-12-2011. The defendant No.1 is owner and possessor of the suit property being bonafide purchaser wherein plaintiff has no right.

**10.** According to defendants, plaintiff has no 1/2<sup>th</sup> share in the suit property being adoptive son and he has not become possessor of the said property. According to the defendant, he is bonafide purchaser and defendant No.2 has sold property for her necessity and expended on medicine. The name of this defendant is entered in 7x12 extract being owner thereof. On these grounds, defendant prayed for the rejection of the

application.

**11.** The defendant No.2 resisted application and claimed that plaintiff is not adoptive son by virtue of deed dt.11-11-1991 and was not in joint possession of the suit property. According to the defendant, there was no adoption as per the Hindu Rites, therefore, the plaintiff does not get the right by virtue of said adoption deed. According to the defendant, the defendant No.1 is in possession of suit property by virtue of sale deed and the contention of the plaintiff as regards having 1/2<sup>th</sup> share in the suit property is wrong. On these grounds, defendant resisted application. The application is filed for temporary injunction and plaintiff has claimed to be joint possessor of the suit property with respect to the 11 anna 6 paisa out of Gat No.306 and consequently, described boundaries of the suit property as as to identify the properties.

**12.** The defendant No.1 and 2 have denied the status of plaintiff by virtue of adoption dt.11-11-1991 and claimed that plaintiff was not in joint possession over the suit property. This application is filed for temporary injunction and the person who is seeking relief of temporary injunction has to satisfy the prima facie case, balance of convenience and hardship. Since the application is filed on the strength of joint possession by the plaintiff and claimed to be enjoying possession alongwith defendant No.2, therefore, the plaintiff has to prove his prima facie joint possession over the suit property.

**13.** The plaintiff has produced 7x12 extract of the property on record vide Exh.3, Sr.No.1, which shows that the name of defendant No.2 has been entered in the ownership column and name of plaintiff has been entered in the other rights column by making bracket to the name of

defendant No.2 who has been shown as legal guardian, whereas the 7x12 extract produced on record vide Exh.21 and 8-A extract of the Gat No.306 prima facie shows that the name of defendant No.1 has been entered in the 7x12 extract and name of the plaintiff has been shown in the other right column. Therefore, the question falls for consideration as to whether the plaintiff was enjoying joint possession over the suit property with defendant NO.2 from whom, he has claimed to be derived the status of adoptive son by virtue of adoption deed dt.11-11-1991 ?

**14.** The defendant No.2 has denied the joint possession of the plaintiff over the suit property. The defendant No.2 claimed that plaintiff was not in joint possession. In such circumstance, the possession of the plaintiff over the suit property to the extent of 11 anna 6 paise out of Gat No. 306 as described in the Para No.1 of the application prima facie became unacceptable unless proved through cogent evidence.

**15.** The plaintiff and defendant No.1 and 2 are claiming possession over the suit property and 7x12 extract with respect to the property prima facie shows the cultivation of defendant No.1 and name of plaintiff in the other right column. Therefore, in view of such circumstance, the theory of possession in joint nature claimed by the plaintiff over the suit property which is out of Gat No.306 i.e.11 anna 6 paise is required to be proved by leading evidence when the defendant No.2 has denied joint possession.

**16.** The documents pertain to the suit property and sugarcane drawn out of Gat No.306 standing in the name of defendant No.1 whereof copies produced on record vide Exh.35, document No.3 shows otherwise circumstances. The copy of sale deed with respect to the transaction

executed in favour of defendant No.1 by defendant No.2 is produced on record vide Exh.3, document No.5 with respect to the Gat No.306, whereby the transaction is effected in respect of the 11 anna share out of total area and described in the sale deed. The identification of the area claimed to be in joint possession of the plaintiff is require to be ascertained through evidence and granting blanket order for restraining the defendants who are also claiming possession over the suit property would not be justifiable.

**17.** The document pertains to the suit property and the 7x12 extract prima facie shows that the defendant No.2 has executed sale deed in favour of defendant No.1 and claimed to be parted possession and cultivation thereof. The question as regards the joint possession of plaintiff over the suit property which is of 11 anna 6 paisa is required to be determined during the course of trial by evidence and granting injunction in such circumstance would amounts to determining the possession and rights of the parties with respect to the property and amounts to decision of entire suit which is simplicitor for injunction and it is not permissible in the eyes of law..

**18.** In view of my above said reasons and considering the documents, I am of the view that the plaintiff has failed to establish prima facie case to restrain the defendant from disturbing joint possession of the plaintiff over the suit property and ouster during the pendency of the suit. The document pertains to the suit property prima facie shows the possession of defendant No.2 and in absence of proving actual delivery of possession and cultivation of plaintiff as regards the suit property, restraining defendant would amount to decision of possession and rights of the parties without

identification and ascertainment of the boundaries of the property.

**19.** In the present facts and circumstances of the case, the balance of convenience is not lies in favour of plaintiff as the defendant No.2 has denied the joint possession and defendant No.1 also claimed possession in respect of the suit property unless actual possession is proved by the plaintiff over the suit property restraining defendant No.1 would not be justifiable. Consequently, in such circumstances, no hardship would be caused to the plaintiff when the plaintiff has failed to establish prima facie joint possession over the suit property, on the contrary defendants would suffer hardship. Hence, I answer point No.1 and 2 in negatively and point No.3 accordingly. The Ad-interim exparte injunction granted in favour of plaintiff and against the defendants on 13-01-2012 is hereby vacated. In the result, I proceed to pass following order.

**ORDER**

1. The application is hereby rejected.
2. The parties shall take note thereof.

Date : 27-01-2014.

(D.S.Khedekar.)  
Civil Judge, Jr.Dn..  
Kagal.