

**ORDER BELOW EXH. 5**

1] The plaintiffs have filed present application under Order 39 Rule 1 and 2 of C.P.C.

2] The plaintiff's case in nutshell is as under :

The suit property as described in para 1 of the application was originally owned by the father of plaintiff namely Mhadu Dadu Kokane ( Jadhav) . The suit property was never the joint family property. It was entered in the name of Mhadu Dadu Kokane exclusively during the implementation of consolidation scheme. Accordingly separate khata extract was prepared in his name. This entry is long lasting and undisputed. Thereafter by the diary No. 1042 the names of plaintiffs are entered to the suit property in the year 1993. Since then they are in the possession of the suit property.

3] However, the defendants No. 1 and 2 have filed partition suit bearing RCS No. 233/2012 against the present plaintiffs including the suit property as the ancestral property. In fact only two lands i.e. Gat No. 786 an 789 are only the ancestral property. The present plaintiffs have filed their written statement as well as the counter claim to that suit claiming that they have become the owners of the suit property by adverse possession. But before two days of the filing of the present suit, defendants No. 1 to 3 in collusion with their relatives have taken away the sugarcane crop from the suit land Gat No. 788 and sent it to the jaggery house of defendant No. 4 and the remaining sugarcane crop measuring 25 tons was sent to the defendant No. 5 sugar factory. Also the the defendants No.1 to 3 are trying to obstruct their peaceful possession.

The plaintiffs made the complaint to the police station. But that was of no use. Hence plaintiffs have constrained to file the present suit for perpetual injunction. By the present application plaintiffs prayed that defendants No. 1 to 3 may be temporarily restrained from causing obstruction to their peaceful possession . It is also prayed that defendants No. 4 and 5 may be ordered to deposit the sugarcane bill in the court without paying it to the defendants No. 1 to 3.

4] The defendants No. 1 to 3 have strongly resisted the application by filing their Written statement at Exh. 22. According to them, the suit property is a ancestral property and the defendants are the co-sharers. Hence injunction order cannot be passed against them. They have denied the plaintiffs' exclusive ownership and possession. The sugarcane sent to the jaggery house as well as to the sugar factory was from the area possessed by defendants No.1 and 2. The defendants No. 1 and 2 have filed the suit for partition against the present plaintiffs and that is pending. In order to give blow to the partition suit the present suit is filed. Hence defendants No. 1 to 3 prayed for rejection of application.

5] The defendant No. 4 appeared but failed to file his written statement. Hence the suit is proceeded without W.S. of defendant No. 4.

6] The defendant No. 5 Sugar Factory filed its W.S. at Exh. 23. It has mentioned that during the period from 16/12/2012 till 21/12/2012 total 13 ton 147 k.g. Sugarcane amounting to 33.538/- is collected in the name of Nivrutti Babu Jadhav. They are ready to pay the said amount as per order of the court. They have contested the suit on the ground that plaintiffs have not issued a notice u/s. 164 of M.C.S. Act. Hence prayed

for the rejection of application.

7] Heard learned advocate Shri. Dingankar for plaintiffs and learned advocate Shri. Bhadkar for the defendants No. 1 to 3 and learned advocate Shri. Muddanna Patil for defendant No. 5. From the rival contentions of the parties following points arise for my determination to which I have recorded my findings for the reasons stated below.

POINTS

FINDINGS

- |   |                        |
|---|------------------------|
| 1] Whether the plaintiffs prove prima facie case in their favour ?  | Partly in affirmative. |
| 2] Whether the balance of convenience is in the favour of plaintiffs ?                                      | Partly in affirmative  |
| 3] Whether the plaintiffs prove that irreparable loss will be caused to them if injunction is not granted ? | Partly in affirmative  |
| 4] What order ?   | As per final order.    |

REASONS

8] In support of their claim plaintiffs have filed 7X12 extract of the suit property, Khata extract of plaintiffs, consolidation extract, the 7x12 extract of the suit property since 1966 till 1972, diary No. 1042, Water tax bill , education tax receipts and receipts of sugarcane factory alongwith the list of documents at Exh. 3. Plaintiffs have also filed the copy of Exh. 1 in RCS No. 233/2012, Written statement, Khata extract of Mahadeo Babu Kokane , 7X12 extract of Gat No.786 and 789, sugarcane receipts and certified copy of consolidation extract alongwith the list of documents at Exh. 30.

9] In rebuttal, defendants have filed the death extract of their father Babu Govinda Kokane, diary No. 865, application made to Talathi of Bachani and the affidavit made before Executive Magistrate alongwith the list of documents at Exh. 31.

**As to Points No. 1 to 3**

10] At the outset, I would like to mention that there is no dispute about the relationship between the plaintiffs and defendants No. 1 to 3. In order to seek the relief of temporary injunction the plaintiffs must prima facie prove their possession over the suit property. Also they must prima facie prove that defendants No. 1 to 3 have cut the sugarcane crop from the suit land Gat no.788 and sent to defendants No. 4 and 5. Now in that respect it is necessary to see the documentary evidence produced on the record. Perusing the 7X12 extract of the suit land Gat No. 785, 788, 822, 910/A and 910/B filed at Exh. 3/1 to 3/5, it appears that the name of plaintiffs are entered to their respective 8 Anna share as the owner as well as the possessor in it. Also from the Khata extract filed at Exh. 3/6 and 3/7 it appears that plaintiff No. 1 and 2 are holding area in suit lands respectively. The entries in the 7X12 extracts of the suit property are undisputed since long. They have presumptive value. The burden is on the defendants No. 1 to 3 to rebut the presumption by showing how the entries are wrong.

11] The learned advocate Shri. Bhadkar vehemently argued that the entries in the 7X12 extract are false and fabricated. It is further submitted that the suit property was originally owned by their father Babu Kokane. He was having three sons by the name Mhadu, defendant No. 1 Nivrutti and defendant No. 2 Yashavant. But father of plaintiff No. 1 and

2 namely Mhadu Babu Kokane has entered his exclusive name in collusion with the consolidation officer. Hence he submitted that father of plaintiffs was not having legal title and so also the plaintiffs. The plaintiffs are not in the lawful possession. Therefore, they prayed that application of plaintiffs be rejected with costs.

12] Much more was argued about the legal title on behalf of defendants no.1 to 3 whereas much was argued about adverse possession on behalf of plaintiffs. However in my view, that issues cannot be decided in present application. It is a settled principle of law that at the time of determination of an application for temporary injunction the factum of possession would only be relevant factor. Whether the possession is lawful possession or not would not be a subject matter of the inquiry. The legal title and ownership can be decided after full fledged trial. Hence at this stage only possession is to be looked into. In present case, apart from the 7 X12 extract of the suit property, the plaintiffs have produced sugarcane receipts, water tax receipts, education cess receipt, etc. which proves the plaintiffs prima facie possession over the suit property. Defendants have failed to produce the single document to prove their possession.

13] The consolidation scheme is implemented in the year 1972 but since then defendants no 1 to 3 nor their predecessor have not made any dispute about it. The entries in 7X12 extract are also not disputed till filing of suit. The defendants have not rebutted the presumption of genuineness of entries in record of rights by adducing cogent and consistent evidence. Hence I conclude that plaintiffs have prima facie proved their possession over the suit property. From the conduct of the defendants

No.1 to 3 and the contentions made by them in their written statement, it reveals that they are trying to obstruct the peaceful possession of plaintiffs. Hence plaintiffs possession is required to be protected.

14] Now turning to the next prayer of the plaintiffs. It is the contentions of plaintiffs that defendants No. 1 to 3 have forcefully taken the 25 tons sugarcane crop from the suit land Gat No. 788 and sent to the Jaggery house of defendant No. 4 and some sugar cane is sent to the defendant No. 5 sugar factory. However, plaintiffs have not filed the single document showing that he has sown sugarcane in suit land Gat no. 788. Also not a single document is produced showing said sugarcane crop was forcefully taken by the defendants No. 1 to 3. Even the police complaint is not filed. It is pertinent to note that defendant No. 4 has not filed his say. Hence on bare words of plaintiffs, it cannot be determined whether a sugarcane crop is sent and collected by defendant no.4.

15] It is the further contention of the plaintiffs that defendants No. 1 to 3 have sent the some sugarcane crop from suit land Gat No. 788 and it is deposited in the name of defendant No. 1 and that bill is pending. However, plaintiffs have failed to prove that the sugarcane from the Gat No. 788 is sent to the sugarcane factory. Even though the defendant No. 5 sugar factory has stated in its W.S. that the sugarcane bill is pending in the name of defendant No. 1 Nivrutti Babu Jadhav, it cannot be presumed that that sugarcane bill is in respect of the sugarcane of suit land Gat No. 788. The plaintiffs have not filed affidavit of single witness to prove that defendants no.1 to 3 have forcefully taken sugarcane crop.

16] In this backdrop, I conclude that plaintiffs have proved prima facie case only in respect of possession. The balance of convenience tilt in favour of plaintiffs. Irreparable loss will be caused to the plaintiffs if injunction is not granted only in respect of possession. Hence I answer points No. 1 to 3 partly in affirmative and proceed to pass the following order.

**ORDER**

- 1] Application is partly allowed.
- 2] The defendants No. 1 to 3 are hereby temporarily restrained from causing obstruction to the peaceful possession of the plaintiffs over the suit property till the decision of the suit.
- 3] The another prayer that defendants No. 4 and 5 should be ordered to deposit the sugarcane bill in court without paying it to the defendants No. 1 to 3 is hereby rejected.
- 4] Parties to bear their own costs.

Date : 22/02/2013

Sd/-  
(P.R. Wagdole)  
Jt. Civil Judge, Jr. Division, Kagal.