

ORDER BELOW EXH.5 IN R.C.S.NO. 18/2015

(Passed on 07.03.2015)

This is an application to restrain defendants from making construction over suit property. Plaintiff is owner of suit property by registered adoption deed dated 10.5.1979. Accordingly name of plaintiff mutated over 7/12 extract of suit property. Plaintiff had filed Regular Civil Suit No. 119/1987 against ancestor of defendant No. 1 to 8 namely Santu Pandit. The said suit and appeal against it i.e. Regular Civil Appeal No. 221/1996 was dismissed. In both these proceedings concerned court observed that, plaintiff was owner of suit property, but failed to prove his possession. Moreover, it was held that defendant not in possession by perfected his title over the suit land by adverse possession. Now plaintiff has filed suit for possession and injunction. The wrong entries in the name of defendants over 7/12 extract are removed. On 6.2.2012 defendants tried to construct house in suit property. Hence, plaintiff is constrained to file this application.

2 Defendant No. 3 resisted this application vide his say at exh. 19. According to him his ancestor namely Santu was in possession of suit property. According to him as per the revenue proceeding case No. 1/87 name of his ancestor was entered in cultivation column of 7/12 extract of the suit property. The Regular Civil Suit No. 119/87 was dismissed. Thereafter Regular Civil appeal No.

221/96 was dismissed on 31.7.2000. The present suit for possession is not within limitation. Defendant has only making repair in house situated over suit property. Therefore, present application is liable to be rejected.

3. Heard both sides at considerable length. On the basis of facts and documentary material placed on record following points arise for my determination to which I have recorded my findings for the reasons to follow.

Sr.n o.	POINTS	FINDINGS
1)	Whether prima facie case lies in favour of plaintiff ?	Yes
2)	Whether balance of convenience lies in favour of plaintiff ?	Yes
3)	Whether irreparable injury would occasion to plaintiff if temporary injunction not granted ?	Yes
4)	What order?	Application is allowed.

REASONS

AS TO POINT NO.1 TO 3

4 In order to prove his case plaintiff has relied upon 7/12 extract of block No. 18 (Exh.6) which goes to show that plaintiff is

owner of suit property and there is no entry of house over it. Mutation entry No. 23 indicates name of plaintiff mutated on the basis of adoption deed. The copy of judgment in Regular Civil Suit No. 119/87 and Regular Civil Appeal No. 221/96 evidenced this court and Honourable Appellate court observed that defendant was not perfected their title over suit land by adverse possession. Photos on record (Exh. 3/1 to 3/7) reveals bricks construction is going on.

5 Learned advocate for defendant urged suit is not within limitation as per Article 65 of the Limitation Act. Moreover defendants are in adverse possession of suit property. Therefore, plaintiff is not entitled to injunction order. On this point he has placed his reliance upon ruling of Delhi High Court in **Sh. Phool Singh versus 1. Sh. Rajinder Singh and others**, reported in **FAO No. 47/2009 & CM No. 2539/2009. Dated 11 September 2009.**

Wherein to the facts of case, it was postulated that,

Appellant has alleged that respondents are neither the co-owners nor they are in possession of suit land. It is the appellant, who is in possession of suit land for last over 60 years. Fore-fathers of appellant were

also in possession of suit land thereafter, appellant gained the possession. Appellant has been in open hostile and uninterrupted possession of suit land and has become owner by adverse possession.

Respondents earlier sought similar relief of injunction but the same was not granted. It is also an admitted case of respondents, that appellant is in possession of suit property (whether it is legal or otherwise). Appellant being prima facie in possession, cannot be restrained from carrying out any construction or making any addition or alteration in his property. Balance of convenience also lies in appellants favour and it is he, who will suffer irreparable loss, if he is restrained from carrying out the construction.

As discussed earlier in Regular Civil Suit No. 119/87 and Regular Civil Appeal No. 221/96 it was observed that, plaintiff has proved his title over suit property and defendants failed to prove

his title by adverse possession. Here, the facts and circumstances in authority cited supra are different from instant case. Therefore, above citation is not applicable in present matter.

6. Article 65 of Limitation Act runs as under.

For possession of	Twelve	When the possession
immovable property	years.	Of the defendant
or any interest herein		becomes adverse
based on title		to the plaintiff.

In view of article 65 it reveals period of limitation starts when the possession of defendant become adverse to the plaintiff. Here case at hand considering the findings in Regular Civil Suit No. 119/87 and Regular Civil Appeal No. 221/96 it become clear defendant not in possession by perfected his title over the suit land by adverse possession. Therefore, prima facie Article 65 seems not applicable in instant case.

7 On the other hand, learned advocate for plaintiff urged defendants are changing nature of the suit property by making construction. Therefore, plaintiff is entitled for the injunction order in his favour. On this point he has placed his reliance on ruling of Apex Court in **Maharwal Khewaji Trust (Regd) Faridkot Versus Baldev Dass**, reported in **2005 (1) Mh.L.J. 1043**.

Wherein it was enunciated that,

Unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings.

8 In view of evidence on record prima facie it appears defendants are changing the nature of suit property by making construction over suit property. Hence, authority cited supra is squarely applicable to present matter.

9 Thus the cumulative effect of above given discussion is that, if we compare prima facie evidence of both sides it seems evidence adduced by plaintiff is seems more probable and genuine. The balance of convenience lies in favour of plaintiff and he will suffer irreparable loss if defendant not restrained from carrying out construction. Hence, I answer point No. 1 to 3 accordingly, and proceed to pass the following order.

O R D E R .

1 Application is allowed.

2. Defendants No. 3, his employees or his agents etc are hereby restrained from making any sort of construction over suit property till final decision of the suit.
3. Costs in cause.

Date- 07.03.2015

(A.B.Tahasildar)
Civil Judge Jr.Dn.Ajara.