

**ORDER PASSED BELOW EXHIBIT NO.05**  
**IN R.C.S. NO. 30/2017**

CNR No. MHK015-000194-2017

01. By this application filed under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908, plaintiff has prayed for grant of temporary injunction, restraining defendants from causing obstruction and interference to their possession over the suit property.

02. Shortly stated the case of the plaintiffs is that, the Gat No. 194 admeasuring about 00.25 R situated Dewarde, Tal. Ajara is self acquired property of plaintiff. Plaintiff has acquired suit property in the joint family from his own income. In year 1967-68 matter was decided between Laxman Vithu Kamble and plaintiff. Said decision was in favour of plaintiff. Temporary injunction was granted against Laxman Vithu Kamble in Reg.Civil Appeal no.463/1969 in the court of Hon'ble District Court, Kolhapur. Plaintiff was only possessor in the suit property. Plaintiff is taking crop like sugarcane, rice, Nachana etc. from the suit property. Plaintiff's name is recorded to the record of rights of the suit property. Defendants have no concern with the suit property.

03. Defendant no.2 is having his land bearing Gat no.193 to the eastern side of the plaintiff's landed property. Defendant no.2, his brother Nivrutti Janba Kamble, himself

Bandu and Gopal Appa Kamble and Krishnarao Appaso Deshmukh are also having their landed property in Gat no.193. Gat no.193 is 3 to 4 feet deep from the Gat no.194 of plaintiff. By taking disadvantage of this fact defendants are trying to disturb the boundaries and to remove the boundary stones. If defendants this act will go on then plaintiff will suffer hardship to cultivate the suit land. Plaintiff will suffer irreparable loss if his land is defrauded by defendants. Hence, plaintiff has filed this suit for permanent injunction and also temporary injunction application to restrain defendants from obstructing his peaceful possession over the suit property and not to disturb the boundaries of suit property and not to cut down trees owned by plaintiff by disturbing bandh of land.

04. The defendants have objected the instant application by filing their say at Exhibit 12. It is contended by defendants that the plaintiff instituted a suit of false and frivolous contention. The plaintiff has not categorically mentioned four boundaries of suit property. Hence, suit of plaintiff not tenable. The defendants have neither disturbed any boundary marks nor caused interference with the possession of plaintiff. There is no specific cause of action stated by plaintiff. Under such circumstances, application of plaintiff liable to be rejected.

05. I have heard the learned advocates for the

respective parties at length.

06. Considering the application and submissions of the parties, following points arise for my determination and I have recorded my findings thereon with reasons stated below.

SR.NO.	POINTS	FINDINGS
1	Whether the plaintiff has made out <i>prima-facie</i> case ?	Yes.
2	Whether the balance of convenience lie in favour of the plaintiff ?	Yes.
3	Whether irreparable loss would be caused to the plaintiff, if the injunction as prayed is not granted. ?	Yes.
4	What order ?	As per final order.

**-: REASONS :-**

**AS TO POINT NO. 1 :-**

07. In order to support their respective claim and defence, both the parties have placed reliance on various documentary evidence. The reference of the said documents will be made in my discussion at the relevant place.

08. Undisputed and uncontroverted facts, as seen from the pleadings of both the sides are that the plaintiff and defendant are relative. But disputed fact is possession of the suit property. On perusal of Exh 3 at Sr.no.1 and 2, 7x12 extract of suit property Gat no.194 the contention of the

plaintiff that defendants are adjacent land holder of him. Under such a circumstances defendants have no any concern with suit property. Intentionally interfering and causing obstruction to his possession.

9. The contention of defendants that they never cause any obstruction to the possession of plaintiff in suit property. Defendants further contended that they neither disturbed any boundary marks nor cutting any trees appeared on the bandh of suit property. Under such circumstances application of the plaintiff not tenable.

10. It appears from 7x12 extract of suit property the plaintiff has possession of suit property. It appears from Sr.no.4 and 5 of Exh.3 the 7x12 extract of Gat no.213 and 193 in which names of defendants were recorded. The defendants being adjacent land holder of plaintiff contesting the plaintiff itself is obstruction to the plaintiff's possession. Here plaintiff has prima facie possession in suit property. Defendants only can be restrained by way of temporary injunction relief. Hence, prima face case is made out in favour of plaintiff. I answer to point no.1 in the affirmative.

**AS TO POINT NO.2 :-**

11. In view of reasons given in support of my findings to the point no.1, the plaintiff has *prima facie* established that

he is in possession of the suit property. However, the defendants are causing obstruction and interference to his possession over the suit property. In this view of matter, I find that the balance of convenience also lies in favour of the plaintiff. Hence, I answer point No.2 in the affirmative.

**AS TO POINT NO.3 :-**

12. As the plaintiff has established that he is in possession of the suit property and the defendants are causing obstruction and interference to his possession, I am of the considered view that the plaintiff would suffer irreparable loss, which could not be compensated in monetary terms. On the other hand, no such irreparable loss would be suffered by the defendants. Hence, I answer point No.3 in the affirmative.

**AS TO POINT NO.4 :-**

13. Thus, in view of my findings to the aforesaid points, the instant application is deserves to be allowed. Hence, in answer point No.4, I proceed to pass the following order.

**ORDER**

- 1) Application Exhibit 5 is allowed.

- 2) The defendants or anybody claiming through them hereby restrained by way of temporary injunction from causing obstruction and interference to the possession of the plaintiff in the suit property, till the final disposal of the suit.
- 3) Cost of this application shall be cost in cause.

Dt. 23.03.2018. (K.K.Khomane)  
Civil Judge, Junior Division,  
Ajara, Kolhapur.

I affirm that the contents of this PDF file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer	:A.S. Podjale
Court	:Civil Court
Jr.Dn.Ajara	
Date	:23.03.2018
Judgment signed by the Presiding Officer on	:23.03.2018
Judgment uploaded on	:26.03.2018