

ORDER BELOW EXH.NO.5

By this application, plaintiffs have prayed for temporary injunction against defendant nos.1 to 3 as not to cause any obstruction to their possession over suit properties Gat no.83 and Village Panchayat Property no.5 and not to alienate or transfer the suit properties, under order XXXIX Rule 1 & 2 and section 151 of Code of Civil Procedure.

2] As per the application, the following agricultural properties situated at village Pohale turfe Alate, Tal. Panhala bearing

| Sr. No. | Gat No. | Total Area | Disputed area |
|---------|-----------|--------------------------------|--------------------------------|
| 1 | 83 | 2 H= 49.9 R Pot Kharab 0.03 | 2 H= 49.9 R Pot Kharab 0.03 |
| 2 | 357 | 0 H= 39 R | 0 H= 39 R |
| 3 | 354 paiki | 0 H= 19.5 R | 0 H = 19.5 R |
| 4 | 1181 | 0 H= 45 R Pot Kharab 0H=01 | 0 H= 45 R |

The above agricultural properties and the village panchyat property no.5 situated at village Pohale turfe Alate, Tal. Panhala, Dist. Kolhapur with the four boundaries mentioned in this application and the stolen sugarcane crop of plaintiffs having worth of Rs.2,50,000/- are the subject matter of this suit. (The said properties are hereinafter referred as 'suit properties' for the sake of convenience.)

3] Plaintiff no.2 Natubai is wife of deceased Vasant and plaintiff nos.1 and 4 are their daughters. As the children of plaintiff no.2 Natubai were not a living so after 10 years of the marriage of plaintiff no.2 with deceased Vasant, deceased Vasant illegally married with defendant no.2 and brought her to his house and defendant no.2 has begotten defendant no.1 and 3 from Vasant. Defendant no.2 is illegal wife of deceased Vasant

and defendant nos.1 and 3 are illegitimate children and they are not getting any right in the properties of deceased Vasant. Suit properties are ancestral properties of deceased Vasant and originally suit properties are of lord Kedarling Devasthan properties and deceased Vasant and his predecessor were having possession in the suit properties. Deceased Vasant Dhondi Jamdar and his predecessor Dhondi Jamdar were serving at Devasthan as Jamdar and in consideration of the said service, the said properties were given for cultivation in stead of salary. Suit properties were previously with Dhondi Jamdar and after his death, the same came to his wife Savitribai. Deceased Dhondi and Savitribai were not having any child. So they adopted deceased Vasant by obtaining necessary government permission and thereafter Vasant started service at Kedarling Devasthan. Suit properties are Baje Inam properties and those are become Rayatava previously. Deceased Vasant was claiming salary and so thereafter Paschim Maharashtra Devasthan Vyavasthapan Samittee appointed him on salary and the suit properties are made Rayatava, however, only entries of Rayatava Khalasa are taken only to Gat no.83 and 1101 and it were recorded in the name of deceased Vasant Dhondi Jamdar and the other properties were recorded in the name of Kedarling Devasthan, however, deceased Vasant was in possession of the suit properties and all the suit properties are owned and possessed by him. So the said entries are not making difference regarding his title and possession over the suit properties.

4] It is contention of the plaintiffs that defendant no.1 Jaywant was appointed in the place of deceased Vasant and he is now serving at Paschim Maharashtra Devasthan Vyavastapan Samittee and there is no connection in between his service and income from suit properties. Suit properties have come to heirs of deceased Vasant by heirship and so suit

properties are available for partition. Marriages of plaintiff no.1 and defendant no.3, have been performed during life time of deceased Vasant and marriage of defendant no.4, has been performed at the expenses of her husband. Plaintiff no.2 and defendant nos.1 and 2 were residing at Wadi Ratnagiri during the life time of deceased Vasant and thereafter since 2002, plaintiff no.2 and defendant nos.1 and 2 are residing separately and they are having separate cultivations. It is contentions of the plaintiffs that plaintiffs and defendant nos.1 to 4 are having separate possession in gat no.83 and in that property, towards northern side plaintiff and defendant no.4 are in possession and towards it's southern side defendant no.1 is in possession and their entries are recorded in the 7/12 extract, however, thereafter defendant nos.1 to 3 started disputes in revenue court and now review application is pending before Additional Commissioner, Pune, however, during pendency, defendant no.1 in collusion with revenue officials, has deleted the names of plaintiffs and defendant no.4 on the 7/12 extracts and thereby obtained illegal order of police protection from Thasildar, Panhala and thereafter he has stolen sugarcane crop of plaintiffs and defendant no.4 in the area of 1 H=22 R and sent it to Sambhaji Khot for crushing. The said sugarcane was worth of Rs.4,45,000/- and plaintiff no.1 has made complaint about the said incident.

5] It is further contention of the plaintiffs that plaintiff no.2 is having electric motor in the suit properties and plaintiffs had taken sugarcane crop with the help of said electric motor for watering the crop. The said electric motor and pipeline has been taken with the consent of defendant no.1, whose fitter engine is also on the well and defendant no.1 has also taken sugarcane crop. Plaintiffs are taking sugarcane crop in suit properties since 2003-2004 and they have sold the said crop and some of

the sugarcane has been sent to the sugarcane factory. Defendant no.1 has committed theft of sugarcane crop of plaintiffs and defendant no.4 and caused loss to them. plaintiffs have paid water taxes of Shri Datta Sahakari Pani Puravtha Sanstha Maryadit Pohale turfe Alate. Plaintiffs asked defendant no.1 and 2 for partition of suit properties by metes and bounds and asked for the income of the stolen sugarcane crop, however, defendant nos.1 and 2 denied the same and threatened plaintiffs to kill, if they came in the suit properties. So plaintiffs have filed this suit for partition of suit properties by metes and bounds and for perpetual injunction, however, by taking disadvantage of entry of name of defendant no.1 to the 7/12 extracts of the suit properties, there is a strong possibility of transfer or sale of suit properties by defendant no.1 and he has spoken the same and threatened plaintiffs as not to come in the suit properties.

6] It is further contention of the plaintiffs that they are in separate possession of Gat No.83 and village panchayat property no.5 and if temporary injunction is not granted in their favour, then they will suffer an irreparable loss. So plaintiffs have prayed for temporary injunction against defendant nos.1 to 3 as not to cause any loss to their separate possession over suit properties Gat no.83 and village panchayat property no.5 and not to alienate or transfer the suit properties or not to create any charge over it till the decision of this suit.

7] Defendant nos. 1 and 2 have filed their say to the application vide Exh.31 and denied the contents in the application. As per the say of defendants, the family tree diagram given by plaintiffs, is false and plaintiffs and defendant no.4 are not having blood relations with the family of deceased Vasant Jamdar. Description of the suit properties, is false. Defendants have denied all the contents in the application. As per

the case of the defendants, plaintiff Natubai was never married with deceased Vasant Jamdar and plaintiff no.1 and defendant no.4 have not begotten out of the said wedlock. Plaintiff Natubai is having name as Saraswati and Natubai has married with Balkrushna Bapu Navhale of village Wadi Ratnagiri on 14/6/1955 by Hindu rites and ceremonies and before her marriage, her name was Saraswati Dinkar Mitake and name of her father was Dinkar Sitaram Mitake. Marriage of plaintiff Natubai was solemnized with Balkrushna Navhale by Balu Savala Upadhye and so marriage of Natubai with deceased Vasant, had not solemnized and there is no question of plaintiff no.1 and defendant no.4 begetting out of the said wedlock. Natubai is residing at her father's house and in the year 2005, their house has been fallen due to heavy rains and they had claimed compensation from government. Natubai was not residing jointly with defendant no.1 and 2, during the life time of deceased Vasant and so plaintiff nos.1 and 2 and defendant no.4 are not having legal rights and interests in the suit property.

8] It is further case of the defendant nos.1 and 2 that defendant no.2 is wife of deceased Vasant and defendant nos.1 and 3 have born out of the marriage of defendant no.2 and deceased Vasant and they are his legal heirs and plaintiff no.2 and defendant no.4 are not having any concern with them. The daughter of defendant no.2 and deceased Vasant namely Padma has been married and residing at her husband's house. Defendant no.1 is married and having wife and children, however, plaintiffs are not having knowledge of the same, which shows falsehood in the contents in this application. Plaintiff no.2 was never wife of deceased Vasant and she had previously married and gave birth to plaintiff no.1 and defendant no.4 as her children. Defendants have contended that suit properties are Baje Inam properties and were allotted for service to the Lord Jotirling Devasthan and after the death of deceased Vasant,

defendant no.1 is serving at Devasthan and he is cultivating suit properties and plaintiffs are not having any concern with the suit properties or crops therein. The contention of the plaintiffs that defendant no.1 committed theft of the sugarcane crop and caused loss of Rs.2,50,000/- to plaintiffs, is false. Plaintiffs are not legal heirs to the suit properties and they are not having any right to claim partition of the suit properties and as per the Devasthan rules (Vat hukum) there is no existence of plaintiff nos.1,2 and defendant no.4. Plaintiff no.2 is not wife of deceased Vasant and other plaintiffs and defendant no.4 are not born to her from deceased Vasant. Plaintiffs have not brought on record the circumstances to grant temporary injunction in their favour and so plaintiffs are not entitled for the relief of temporary injunction. So defendant nos.1 and 2 have prayed for rejection of the application. Defendant no.3 appeared but failed to file her say.

9] Heard both the sides and perused records. After going through the application, say and hearing both the sides, the following points arise for determination and I am giving my findings thereon for the reasons stated therein -

| <u>Sr. No.</u> | <u>Points</u> | <u>Findings</u> |
|----------------|--|--------------------|
| 1] | Whether prima facie case is in favour of plaintiffs ? | In the negative. |
| 2] | Whether balance of convenience lies in favour of plaintiffs ? | In the negative. |
| 3] | Whether plaintiffs will suffer an irreparable loss, if temporary injunction, as prayed is not granted in their favour? | In the negative. |
| 4] | What Order? | As per final order |

REASONS

AS TO POINT NOS.1 TO 3:-

10] Learned advocate for plaintiffs has filed on record his written

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(Order below Exh. 5)

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arguments vide Exh.52 and also argued orally. I have perused the said written arguments. In support of his arguments, ld. Advocate for the plaintiffs, has relied upon the decision of Hon'ble Bombay High Court in the case of **Smt. Sarladevi wd/o. Kundanlal Bandawar, Dharampeth Nagpur Vs. Shailesh s/o. Gouri Shankar Namdev, Tilaknagar, Nagpur reported in AIR 1996, BOMBAY. 98**; wherein it is held that '*person in possession can claim injunction against everyone including rightful owner and rightful owner cannot evict him by force, however, he has to follow the due process of law.*'

11] Per contra, ld. Advocate for the defendants submitted that plaintiffs have filed false suit to grab the suit properties and harass defendants. He submitted that plaintiffs have not proved their exclusive possession over the suit properties at the time of filing of this suit or this application and plaintiffs themselves have admitted in this application that there is engine of defendant no.1 on the well in the suit properties. He submitted that plaintiffs have admitted joint possession of defendants and plaintiffs were never in possession of suit properties on the date of filing of this suit and their names were not recorded to the 7/12 extracts of the suit properties. He submitted that injunction against co-sharers cannot be granted. He submitted that plaintiffs have filed on record false receipts and false documents and plaintiff Natubai has never married to deceased Vasant, however, her name is Saraswati Dinkar Mitake and she has been married with Balkrushna Babu Navhale R/o. Wadi Ratnagiri, Tal. Panhala. He submitted that plaintiffs and defendant no.4 are not having any concern and blood relations with the family of deceased Vasant and they are not having any concern with the suit properties. Defendants have filed on record documents showing marriage of plaintiff Natubai with Balkrushna Babu Navhale and copy of extract of their marriage

registration, which shows that plaintiffs have suppressed material facts and not approached to the court with clean hands and so plaintiffs are not entitled for the discretionary relief of temporary injunction. In support of the said arguments, ld. Advocate for defendants has relied upon the following case laws, (1) decisions of Hon'ble Himachal Pradesh High Court in the case of **Sant Ram Vs. Faquiroo and anr. MANU/HP/0004/1985.** (2) Decision of Hon'ble Punjab and Harayana High Court in the case of **Karam Singh and anr. Vs. Lakhbir Kaur and ors. MANU/PH/2237/2010.** (3) Decision of Hon'ble Gujrat High Court in the case of **Gopal Laxmandas Lakhani Vs. Krishnaben Girdharilal Lalvani, MANU/GJ/0222/2002,** (4) Decision of Hon'ble Gujrat High Court in the case of **Mansukhlal Pujalal Vs. Assistant Collector, Jamnagar, MANU/GJ/0424/1995,** (5) Decision of Hon'ble Rajasthan High Court in the case of **Smt. Renuka Bhati and Ors. Vs. His Highness Maharawal Brijraj Singh and anr. MANU/RH/1429/2010.**

I have gone through the above case laws.

12] The above case laws relied upon the defendants are in respect of the ratio that if plaintiffs are not in exclusive possession of the suit properties at the time of filing of the suit or application for injunction, then plaintiffs are not entitled for the relief of injunction and final relief shall not be granted, while deciding the application for temporary injunction.

13] In this case, plaintiffs have claimed their possession over suit properties. Plaintiffs have specifically mentioned in this application that plaintiffs and defendant no.4 have taken sugarcane crop in the suit properties and defendants have also taken their sugarcane crop in the suit

properties. Plaintiffs have mentioned that there is 5 HP electric motor and pipeline of plaintiffs and defendant no.4, fixed on the well in the suit properties with consent of defendant no.1 and there is fitter engine of defendant no.1 on the said well and defendant no.1 has also taken sugarcane crop with the help of said watering source. So from the said contents, in the application, the joint possession of plaintiffs and defendants, is pleaded by plaintiffs.

14] Plaintiffs have pleaded that there is separate possession of plaintiffs and defendant no.1 to 4 in Gat no.83 and plaintiffs are in possession towards northern side and defendant no.1 is in possession towards southern side in Gat no.83. Plaintiffs have come with the case that in Gat no.83 and Village Panchayat Property no.5, plaintiffs are in separate possession of the suit property and so plaintiffs have prayed for temporary injunction against defendant nos.1 to 3 in respect of two suit properties, however, perusal of the documents filed on record by plaintiffs and defendants, does not support the said contentions of the plaintiffs regarding their separate and independent possession over Gat no.83 and Village Panchayat Property no.5. Plaintiffs have filed on record 7/12 extracts of suit property Gat no.83 showing entries for the year 2006-07, 2012-13 vide list below Exh. 42, however, the said extracts are prior to the filing of this suit and not at the time of filing of this suit. The said extracts and entires of the plaintiffs to the suit properties along with the defendants are till the year 2013 and not thereafter. The said fact is necessary to mention here because in the application itself, plaintiffs have mentioned that proceedings is going on in between plaintiffs and defendants regarding the entries in the revenue record before the commissioner, Pune and thereafter defendant no.1 has obtained order of Police Protection from Ld. Thasildar, Panhala and the said order is illegal

and thereafter defendant no.1 with the help of said Police Protection order, has committed theft of sugarcane crop of plaintiffs. It is the defence of defendants that on the date of filing of this suit and this application, plaintiffs were not in possession of the suit properties and so they cannot claim injunction. Plaintiffs have filed on record 7/12 extracts of Gat no.83 vide Exh.8, which shows that names of plaintiff no.1 and 2 are deleted. The said 7/12 extracts bears name of defendant no.1, 2 and 3. Further, the 7/12 extracts of the suit properties bearing Gat no.357, 354, 1101, Village Panchayat Property no.5, filed on record vide Exhs.9 to 12, does not bear the entry of name of plaintiffs but bears the names of defendant no.1 Jaywant. The said extracts are of the year 2013-14. The extract of Village Panchayat Property no.5 bears name of defendant no.1 Jaywant and does not bear the name of plaintiffs and defendant no.4. So the said entries in the revenue record, prima facie, does not support the contention of plaintiffs in this application.

15] Further, even though plaintiffs have filed on record receipts of sugarcane factories, which are in the name of plaintiff nos.1 and 2, however, the said receipts are of prior to the year 2013 and plaintiffs have not filed on record any documents showing their possession over the suit properties Gat no.83 and Village Panchayat Property no.5, at the time of filing of this suit in 2015. The electricity bills filed on record by plaintiffs are prior to the filing of this suit. So in the light of above entires and above documents, I found substance in the defence of the defendants that on the date of filing of the suit in the year 2015, plaintiffs are not found in exclusive and separate possession of suit properties bearing Gat no.83 and Village Panchayat Property no.5. So in such circumstances, prima facie case and balance of convenience is not in favour of plaintiffs.

16] In this suit, both the sides have filed on record affidavits of their witnesses. Plaintiffs have filed on record affidavits of their witness namely a plaintiff Natubai Vasant Jamdar (Exh.65). Defendants have filed on record affidavit of defendant no.1 Jaywant Vasant Jamdar (Exh.57), Sampat Mahadev More (Exh.58), Uttam Bajirao Powar (Exh.59), who have deposed that plaintiffs are not in possession of suit properties, but defendants are in possession of suit properties.

17] Further, in support of their the defence, defendant no.1 has filed on record xerox copy of certificate of Talathi, police Patil and sarpanch of village Wadi Ratnagiri showing defendant nos.1 to 3 as the only heirs of deceased Vasant Dhondi Jamdar. Defendants have filed on record xerox copy of marriage registration certificate in respect of marriage of Saraswati Dinkar Mitake with Balkrishna Bapu Navhale and xerox copy of voter's list in respect of plaintiff Natubai Dinkar Mitake, in support of their defence regarding maiden name of plaintiff Natubai as Natubai Dinkar Mitake and her name after marriage as Natubai Balkrishna Navhale.

18] In the light of the above entire discussions, at this prima facie stage, it is needless to say that even though plaintiffs have claimed their independent and separate possession over suit properties gat no.83 and Village Panchayat Property no.5, however, plaintiffs have failed to prove their exclusive possession and separate possession over the said suit properties and as per the settled principles of law injunction against co-sharers cannot be granted. So from the entire facts and circumstances, prima facie it is clear that plaintiffs have failed to made out prima facie case, balance of convenience in their favour.

19] So in such circumstances, it is clear that plaintiffs have failed to prove prima facie case, balance of convenience in their favour and from the record, it is clear that prima facie case and balance of convenience, is not in favour of plaintiffs, but it is in favour of defendants and plaintiffs will not suffer any irreparable loss, if temporary injunction as prayed by plaintiffs, is not granted in their favour. Hence, I answer point nos.1 to 3 in the negative.

AS TO POINT NO.4:-

20] As I have already answered point nos.1 to 3 in the negative., so, in order to answer point no.4, I proceed to pass the following order-

ORDER

- 1] Application stands rejected.
- 2] No order as to costs.

Dated : 19/10/2018.

Sd/-
[V.A.Awaghade]
Jt. Civil Judge, J. D.,
Panhala.

:- CERTIFICATE :-

I affirm that the contents of the P.D.F. file order are same, word to word, as per the original Order.

| | |
|-----------------------------|--------------------|
| Name of the Stenographer | Shri. A.A.Patil |
| Name of Court | Shri. V.A.Awaghade |
| Date of Dictation | 19/10/2018 |
| Order signed by the P.O. on | 29/10/2018 |
| Order uploaded on | 29/10/2018 |