



**ORDER BELOW EXH.5 IN RCS No.196/2019**

1. This is an application filed by the plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 against defendants thereby claiming an interim injunction restraining them from disturbing his possession over the property described as under

Gat no.1425 admeasuring 0.13 R located at Village-Mouje Takali, Taluka- Shirol, District-Kolhapur and which is bounded as under:

Towards East— Property of Shri.Vasant Dadu Patil

Towards West— Property of Nita Baban Kale

Towards South— Road

Towards North— Gat no.1424 i.e. Property of Shri.Dipak Pandurang Jadhav-Patil

(Hereinafter referred as the **suit property** for the sake of brevity)

2. The encapsulated facts of the plaintiff case are that, suit property was originally owned and possessed by Aakkatai Manohar Patil, Mugadhakane, Suresh Patil and Smita Patil. On 05/09/2019 vide registered sale-deed bearing no.4021/2019, plaintiff purchased the suit property from the above persons after paying a consideration of Rs.7,20,000/-. By virtue of the said sale-deed, plaintiff was also put in possession of the suit property. In pursuant of sale-deed, name of the plaintiff is also mutated in the 7/12 extract and 8A extract of the suit property. Thus, on the strength of registered sale-deed, plaintiff became the

owner and the possessor of the suit property. Plaintiff is cultivating sugar cane crops in the suit property.

3. It is the further contention of the plaintiff that, defendants father namely Vasant Dadu Patil is having agricultural land situated towards the eastern side of the suit property. Mr.Vasant Dadu Patil was intending to purchase the suit property from the predecessor of the plaintiff. However, the predecessor of the plaintiff sold the suit property to plaintiff. As plaintiff purchased the suit property, defendants being son of Mr.Vasant Dadu Patil started obstructing the possession of the plaintiff over the suit property. Defendants threatened plaintiff to disposes him from the suit property. Plaintiff apprehended that, defendant will disposes him and will take away the sugar cane from the suit property. Considering the acts of the defendants, plaintiff is constrain to file present suit. By virtue of the present suit, plaintiff claimed permanent injunction against the defendants. By virtue of the present application, plaintiff have prayed to restrain the defendants from disturbing his possession over suit property in any manner till disposal of suit. Present application is supported by affidavit.
4. After service of show cause notice, defendants appeared and filed their say at Exh.14. Defendants denied the averments which are adverse to their interest. It is the contention of defendants that, Gat no.1424, 1423, 350 and suit property are the ancestral property of deceased Manohar, deceased Pandurang and deceased Sakharam. The predecessor of plaintiff are the legal heirs of deceased Manaohar. Mr.Rajendra, Mr.Dipak and Ms.Geeta are the legal heirs of deceased

Pandurang. Mr.Prakash, Mr.Anil, Mr.Pramod and plaintiff are the legal heirs of deceased Sakharam.

5. It is the further contention of defendants that, the above properties being the ancestral properties of above persons have not been partition till date. The status of the above properties is undivided. However, for the sake of convenience, name of predecessor of plaintiff was recorded in the 7/12 extract of suit property, name of Sakharam was recorded in the 7/12 extract of Gat no.1423 and name of Pandurang was recorded in the 7/12 extract of Gat no.1424. It is the further contention of defendants that, even though names of Manohar, Pandurang and Sakharam was mutated independently in the 7/12 extract of above properties, the status of the property is undivided.
6. It is the further contention of defendants that, as the above properties are undivided, there were disputes among the above heirs of deceased Manohar, Pandurang and Sakharam with respect partition with the above properties. The legal heirs of deceased Manohar by taking advantage of their names appearing in the 7/12 extract of the suit property, sold the suit property in favor of plaintiff.
7. It is the further contention of defendants that, Mr.Dipak Jadhav who is the legal heir of deceased Pandurang raised question to the predecessor of the plaintiff regarding the said sale-deed, the predecessor of the plaintiff gave deaf ears to Mr.Dipak Jadhav. Considering the act of predecessor of the plaintiff, Mr.Dipak Jadhav instituted R.C.S.no.177/2019 for partition and declaration with

respect Gat no.1423, 1424, 350 and suit property against the legal heirs of deceased Manohar, deceased Pandurang, deceased Sakharam and plaintiff. It is the further contention of defendants that, plaintiff have received the summons of the above suit. In order to counter the said suit, plaintiff has filed present suit.

8. It is further contention of the defendants that, the predecessor of plaintiff had filed R.C.S.no.2/2000 against deceased Pandurang Patil who is father of Mr.Dipak Patil and prayed permanent injunction with respect to the suit property. The said suit was resisted by deceased Pandurang on the ground that suit property has not been partitioned. The said suit dismissed for non prosecution.
9. It is further contention of defendants that, the predecessor of plaintiff were not having possession of the suit property. The suit property was in possession of Deceased Pandurang Patil and after his death the suit property came in possession of his i.e. Mr. Dipak Patil. On 20/3/2008, Mr.Dipak Patil by executing an agreement gave the suit property to Mr.Vasantrao Patil for cultivation. Mr.Vasantrao Patil is the father of defendants. It is further contention of defendants that, since 20/03/2008 the suit property is in possession of Mr.Vasantrao Patil who is cultivating and possessing the suit property for Mr.Dipak Patil. It is further contention of defendants that, defendants being sons of Mr.Vasantsrao Patil are cultivating the suit property alongwith with their father and hence defendants are in possession of the suit property.

10. It is further contention of defendants that, suit properties is yet to be partitioned. In such circumstances, plaintiff who is a stranger can not claimed any right or interest in the suit property. It is further contention of defendants that, plaintiff through present defendants is trying to claim orders against Mr.Dipak Patil. Mr.Dipak Patil being a co-sharer alongwith the predecessor of plaintiff cannot be restrained by any injunction order. In pith and core, defendants submitted that, plaintiff by using a shortcut method, plaintiff is trying to obtain an injunction order against the co-sharer. Defendants finally submitted that, plaintiff has not came with a clean hand before the court. Present suit is bad for non-joinder of necessary parties i.e.legal heirs of deceased Sakharam and Pandurang. Thus, Defendant prayed for rejection of Interim application.
11. In support his claim the plaintiff has filed the following documents:
- a. 7/12 extract of suit property (Exh.3/1).
  - b. 8A extract of suit property (Exh.3/2 ).
  - c. Registered sale-deed of plaintiff (Exh.3/3)
  - d. Certificate issued by Sambajiraje Gramin Bigar Sheti Pathsansatha (Exh.3/4).
  - e. Undertaking by plaintiff in favor of Shri Gurudatt Sugar Ltd. (Exh.3/5).
  - f. Police complaint made by plaintiff to commissioner of police, Kolhapur dated 31/12/2019 (Exh.12/1).
  - g. Police complaint made by plaintiff to Kurundwad police station dated 31/12/2019 (Exh.12/2).
  - h. Postal Acknowledgement of above complaints (Exh12/3 and 4).
  - i. Photographs of suit property (Exh.12/4 to 6 ).
  - j. 7/12 extract of suit property from the year 1976 to 1988 (Exh.18/1)
  - k. Extract by which Gat number of suit property was changed from Gat no.1940 to Gat no.1425 (Exh.18/2)
  - l. 7/12 extract of the suit property from the year 1989 to 1999 (Exh.18/3)

- m. 7/12 extract of the suit property from the year 1999 to 2019 (Exh.18/4)
  - n. Computerized 7/12 extract of the suit property (Exh.18/5)
  - o. 8A extract of Gat no.1424 (Exh.18/6)
  - p. Computerized 7/12 extract of Gat no.1424 (Exh.18/7)
  - q. Affidavit of Rajendra Jadhav (Exh.25)
  - r. Affidavit of Aakkatai Jadhav (Exh.24)
  - s. Affidavit of Suhas Jadhav (Exh.19)
12. In support their claim defendants have filed the following documents.
- a. Exh.1 of R.C.S.no.2/2000 (Exh.16/1)
  - b. Written statement filed deceased Pandurang of R.C.S.no.2/2000 (Exh.16/2)
  - c. Agreement dated 20/3/2008 between Dipak Patil and Vasantrya Patil (Exh.16/3)
  - d. Exh.1 of R.C.S.no.177/19 (Exh.16/4)
  - e. Bill dated 25/4/2018 of Gurudatt sugars Ltd in the name of Dipak Patil (Exh.16/5)
  - f. Photographs of suit property (Exh.16/6 and 7)
  - g. Receipts of photographs (Exh.16/8)
  - h. Agreement between Dipak Patil and Ykenteswara Power Project Ltd dated 15/7/2008 (Exh.16/9)
  - i. Agreement between Dipak Patil and Ykenteswara Power Project Ltd dated 12/6/2019 (Exh.16/10)
  - j. Receipt of the year 2007 to 2008 maintained by Mr.Vasantrya Patil (Exh.32/1)
  - k. Receipt of the year 2009 to 2011 maintained by Mr.Vasantrya Patil (Exh.32/2)
  - l. Receipt of the year 2012 maintained by Mr.Vasantrya Patil (Exh.32/3)
  - m. Receipt of the year 2012 to 2013 maintained by Mr.Vasantrya Patil (Exh.32/4)
  - n. Receipt of the year 2016 to 2017 maintained by Mr.Vasantrya Patil (Exh.32/5)
  - o. Bill for the year 2012 in the name of Mr.Vasantrya Patil of Deshbhakat Ratanappa Kumbhar Panchanga Sugar Factory Ltd. (Exh.32/6)
  - p. Bill dated 30/12/2019 of Gurudatt Sugar Ltd. in the name of Mr.Vasantrya Patil (Exh.32/7)
  - q. Bill dated 30/12/2019 of Gurudatt Sugar Ltd. in the name of Mr.Vasantrya Patil (Exh.32/8)

- r. Bill for the year 2016-2017 of Datt Sugar Factory in the name of Mr.Vasantrao Patil (Exh.32/9 and 10)
  - s. Bill dated 13/3/18 of Gurudatt sugar Factory in the name of Mr.Vasantrao Patil (Exh.32/11)
  - t. Extract of survey no.397/1B (Exh.32/12)
  - u. 7/12 extract of survey no.397/1B (Exh.32/13)
  - v. Extract of survey no.397/1B (Exh.32/14)
  - w. Affidavit of Anil Sadashiv Patil (Exh.30)
  - x. Affidavit of Mahadev Maruti Ingale (Exh.29)
  - y. Affidavit of Kashim Mulla (Exh.28)
  - z. Affidavit of Sanjay Patil (Exh.27)
13. Heard learned Advocate R.G.Gourwade for plaintiff and learned Advocate D.D.Magdum for defendants. Advocate for plaintiff argued that, initially the suit property was originally owned and occupied by deceased Sitaram. After the death of Sitaram, suit property along with the other properties were partitioned between his sons namely Manohar, Pandurand and Sakaharam. Out of the said partition, suit property came in the share of deceased Manohar. The predecessor of the plaintiff are the legal heirs of the Manohar. After the death of Manohar, the predecessor of the plaintiff became owner and possessor of the suit property. The 7/12 extract of the suit property clearly speaks that since the year 1977 the predecessor of the plaintiffs were the owner and possessor of the suit property. He further argued that, the predecessor of the plaintiff being the owner and possessor of the suit property transferred the same in the favor of plaintiff and thus plaintiff became the owner and possessor of the same. Plaintiff purchased the suit property along with the crops therein.
14. He further argued that, defendants in their entire say cum written statement have not pleaded that they are in possession of the suit property. He further argued that, the alleged agreement dated 20/3/2008 is fabricated and an after thought document. He further argued that, even for the sake of argument if we consider the said agreement, the said agreement is executed between Dipak Patil and Mr.Vasantrao Patil. Defendants are no where concern with the said

agreement. Thus, defendants are having no right of whatsoever nature in the suit property. He further argued that, the bills filed by the defendants are fabricated. He further argued that, no harm whatsoever nature will be cause to defendants if they are restrained by an injunction order as defendants are no where concern with the suit property. He further argued that, plaintiff has established prima facie case in his favor on basis of documentary evidence. Balance of convenience heavily lies in plaintiff's favor and if injunction as prayed is not granted, plaintiff will suffer irreparable loss which will not be compensated in terms of money. Lastly, he argued that, application may be allowed.

15. Per contra, advocate for defendants argued that, plaintiff is not a bona fide purchaser of the suit property as the suit property is undivided and yet to be partitioned. He further argued that, the predecessors of plaintiff was having the possession of the suit property. Plaintiff has not filed even a single document to show that his predecessors was having possession of the suit property. He further argued that, if the suit property is partitioned, burden is upon the plaintiff to prove the same. However, plaintiff has not filed a single document on record to show that suit property is partitioned. He further argued that, plaintiff has concealed facts regarding institution of R.C.S.no.2/2000 and R.C.S.no.177/19 only with the intention to conceal the status of the suit property which is nothing but an undivided property. He further argued that, defendants are occupying possession of the suit property through Mr.Vasantrao Patil who is occupying the suit property as per the agreement dated 20/3/2008 executed by Mr.Dipak Patil. He therefore argued that if the injunction is granted against defendants, it will operate injunction against Dipak Patil who is co-sharer of the suit property.
16. He further argued that, the bill of various sugar company reveals that, Mr.Vasantrao Patil is in possession of the suit property as per the said agreement. He further argued that, as R.C.S.no.177/19 is pending, present suit deserves to be stayed under section 10 the Code of Civil Procedure. He further argued that, plaintiff is not is possession of the

suit property and therefore he cannot claimed injunction against defendants. He finally submitted plaintiff is not having prima facie case and balance of convenience in his favour and if injunction is granted great prejudice will cause to defendants who are occupying the possession of the suit property through Mr.Dipak Patil. To reinforce his submission, advocate for the defendant relied upon the citations of *Hon'ble Supreme Court in the case of Rao vs.Rao reported in 2019(2) CCC 108(SC), in the case of Ajit Kour vs.Darshan Singh reported in 2019(2) CCC 110(SC), in the case of State of Himachal pradesh vs.Keshav Ram reported in AIR 1997 SC 2181.* He further relied upon the citations of *Hon'ble Bombay High Court in the case of Prakash Aakotkar vs. Mansurkha Gulabkha reported in AIR 1996 Bom.36.* He further relied upon the citation of *Hon'ble Panjab and Haryana High Court in the case of Ram vs Ram reported in AIR 1961 Panjab 528.* He further relied upon citation of *Hon'ble Aalahabad High Court in the case of Ompal vs. Raj Krishna reported in in 2011(1) CCC 98 (ALL).* He further relied upon a citation of *Orrisa High Court in the case of Jemma vs.Raghu reported in AIR 1977 Orrisa 12.* Thus, on the aforesaid reasons and relying upon the said citation, defendants prayed for rejection of application.

17. Considering the rival contentions, following points arise for my determination, findings on those points for the reasons mentioned thereunder are as follows:

Sr.no.	Points	Findings
1.	Whether plaintiffs have established Prima-Facie Case in their favor?	Yes
2.	In whose favor Balance of Convenience lies?	Plaintiff
3.	Whether Plaintiff will suffer irreparable injury if injunction as prayed in not granted in his favor?	Yes.
4.	Whether plaintiff is entitled for the relief of temporary Injunction as Prayed?	Yes.

18. To start with the uncontroverted facts. Considering the material before the court, following are the undisputed proposition.
  - a. Institution of R.C.S. no.2/2000.
  - b. Institution of R.C.S.no.177/2019.
  - c. Description of the suit property.
19. The controversy between the parties, so far as the instant application is concern revolves in a narrow compass, whether plaintiff is in exclusive possession of the suit property, whether that possession is having any lawful reference and if yes, whether defendants are obstructing the said lawful possession.

**As to Points no.1 to 3**

20. It is the claim of plaintiff that, he is in exclusive possession of the suit property on basis of sale-deed executed by Aakkatai and others. Mrs.Akkatai and others who where the exclusive owners and possessor of the suit property transferred the same in his favor. In order to prove his claim, plaintiff heavily relied upon the 7/12 extracts of the suit property and his registered sale-deed. The 7/12 extract of the suit property filed below Exh.18 clearly shows that the name of predecessors of plaintiff is appearing as the owner and the possessor of the suit property since the year 1977. The entires in the 7/12 extract of the suit property were never challenged since 1977 till the execution of the sale-deed. Thus, prima facie, it is apparent that, Akkatai and others appears to be the exclusive owners and possessors of the suit property since 1977.
21. On perusal of sale-deed, it clearly shows that the predecessor of the plaintiff have sold the suit property by registered sale in favor of plaintiff and plaintiff was put the possession over the suit property. The name of the plaintiff was also mutated in the 7/12 extract of the suit property on the basis of said sale-deed. Thus, prima facie, it is further apparent that plaintiff is in possession of the suit property and that possession is having a lawful reference in terms of registered sale deed.

22. It the claim of defendant that, the suit property is undivided and one of the co-sharer namely Mr.Dipak Patil have permitted their father to cultivate the suit property by executing an unregistered agreement. However, defendants have not filed any material on record in their own names to show that they are in possession over the suit property. Whether there was partition or not between predecessors of plaintiff and other heirs of deceased Sitaram is to be decided at the time of trail. As stated above, on perusal of 7/12 extracts of the suit property, it prima facie apparent that, suit property was the separate property of predecessors of plaintiff. At this stage plaintiff have prima facie proved that his base of possession is registered sale deed which is not set-aside by any competent court and which is executed by Akkatai and others who were exclusive owners and possessors of the suit property. Therefore, I am of the view that, prima facie case and balance of justice lies in favor plaintiff.
23. Plaintiff has stated on oath that defendants are obstructing his possession. It is the apprehension of plaintiff that, defendants will dispossess the plaintiff. The claim of the plaintiff is further corroborated by the police complaints filed by the plaintiff. It is worth to note that, as the defendants have totally denied the claim of the plaintiff, in such circumstances, the possibility of dispossessing the plaintiff from the suit property cannot be ruled out. Further, it is the claim of the defendants that, plaintiffs are not occupying the suit property lawfully. I am of the view that, the said claim of defendants itself amounts to obstruction over the lawful possession of plaintiff over the suit properties. Thus, if injunction is withhold, plaintiff will suffer greater mischief as that of the defendants which cannot be compensated by award for damages or by ordering restitution subsequently at the end of the trail. Hence the plaintiff is entitled to temporary injunction as prayed. Accordingly point no. 1 to 3 are answered in affirmative.
24. In the case of Rav vs. Rao (Supra), the Hon'ble Supreme Court has held that, possession of one co-sharer is possession for all co-sharer. Possession cannot be adverse to other sharers.

25. In the case of Ajit Kour (Supra), the Hon'ble Supreme Court has held that, mutation of a property in revenue record are fiscal proceedings and does not create and extinguish title nor has it any presumptive any value on title. It only enable the person who favors mutation has been ordered, to pay land revenue. At the same time, effect of declaratory decree to restore property alienated to estate of aliener and until and unless alinees are able to convince court that they have no subsisting interest in property, heirs of alienates would be entitled to benefits of property as per law of successions.
26. In the case of Akotkar (Supra), the Hon'ble Bombay High Court has held that, co-owner in possession of the property for and on behalf of other co-owners. Cannot claim injunction against other co-owners restraining them from interfering with possession and enjoyment of the suit property so as to exclude them from exercising their right as co-owner.
27. In the case of Ram vs. Ram (Supra), the Hon'ble Punjab High Court has held that, i) a co-owner has an interest in the whole property and also in every parcel of it. ii) Possession of the joint property by on co-owner is in the eye of law possession of all even if all but one are actually out of possession. iii) A mere occupation of a larger portion or even of an entire joint property does no necessarily amount to ouster as the possession of one is deemed to be on behalf of all. iv) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as when a co-owner openly asserts his own title and denies that of the other. v) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment. vi) Every co-owner has right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners. vii) Where a co-owner is in possession of separate parcels under an

arrangement consented to by the other co-owners it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition. viii) The remedy of a co-owner not in possession or not in possession of a share of the joint property is by way of a suit for partition or for actual joint possession but not for ejection same is the case where a co-owner sets up an exclusive. ix) Where a portion of the joint property is by common consent of the co-owners reserved for a particular common purpose it cannot be diverted to an inconsistent user by a co-owner if he does so he is liable to be ejected and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered. Case law reviewed.

28. In the case of State of Himachal Pradesh (Supra) the Hon'ble Supreme Court has held that, entry in revenue record cannot form basis for declaration of title.
29. In the case of Ompal (Supra), the Hon'ble Allahabad High Court has held that, in absence of partition of property belongs to co-owner jointly, an outsider purchasing and unpartitioned share in property not entitled to take forcible possession under law.
30. In the case of Jemma (Supra), the Hon'ble Orissa High Court has held that, a plaintiff not in possession of the suit property is not entitled to relief of injunction without claiming recovery of possession.
31. This court totally concurs the proposition of law laid down in supra citations.

**As to point no.4**

32. Plaintiff has established 3 ingredients i.e. balance of convenience, prima facie case and irreparable injury in his favor. Hence the plaintiff is entitled to an order of temporary injunction on legal as well as factual aspects. As such in answer to point no. 4 following order is passed.

**Order**

1. Application is allowed.
2. The defendants or any other persons on their behalf are temporarily restrained from obstructing the possession of the plaintiff over the suit properties till final disposal of suit.
3. Cost in cause.
4. Application is disposed of accordingly.

Kurundwad

16th January 2020

(S.K.Shaikh)

Jt. Civil Judge Jr. Dn., Kurundwad

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

Name of the Stenographer	:	Rahul Laxman Mane
Name of Court	:	Shri. S. K. Shaikh, Joint Civil Judge Junior Division, Kurundwad.
Date of Dictation	:	16/01/2020
Order signed by the P.O. on	:	16/01/2020
Order uploaded on	:	16/01/2020