

R.C.S. NO : 183/2014

ORDER BELOW EXHIBIT NO.5

01. This is an application under Order XXXIX Rule 1 and 2 of the Civil Procedure Code,1908 filed by the plaintiffs. The defendants filed their Say and written statement at Exhibit no. 10. Perused the application and Say. Heard both the parties at length.

02. The contention of the plaintiffs is that, lands bearing S. No. 99 and S. No. 101/8 are the ancestral properties of the parties to the suit. The same are not yet partitioned. The plaintiffs contend that at the time of implementation of the consolidation scheme to their village the share of the defendants was mistakenly shown as 4 annas instead of 2 annas. The defendants are taking undue advantage of the said allegedly wrongful entry and claiming their possession over the said piece of land. Being aggrieved by it the plaintiffs are claiming temporary injunction against the plaintiffs.

03. The defendants in their Say at Exhibit no. 10 have denied the contents of the application. They state that the suit properties are already partitioned and the defendants are not in joint possession of the suit properties with the plaintiffs. According, to the defendants they are cultivating the suit properties since last 15 years. Hence, the defendants pray for the rejection of the application.

04. The plaintiffs have filed the following documents in support of their case which I have thoroughly perused-

Sr.No.	Description	Exhibit
1	7 x 12 extract of Gat No. 521 of Mouje Savarde Patankar for the year 2013-2014	—
2	7 x 12 extract of Survey No. 99 for the year 1961-1962 to 1978-79 dated 07/10/2014	—
3	7 x 12 extract of Gat No. 464 (New Gat No. 521) for the year 1979-80 to 1988-1989 dated 08/10/2014.	—
4	7 x 12 extract of Gat No. 521 for the year 1989-1990 to 1998-1999 dated 08/10/2014.	—
5	7 x 12 extract of Gat No. 523 for the year 2013-2014 dated 17/06/2014.	—
6	7 x 12 extract of Survey No. 101/8 for the year 1961-1962 to 1978-1979 dated 08/10/2014	—
7	7 x 12 extract of Gat No. 466 (New Gat No. 523) for the year 1979-1980 to 1988-1989 dated 08/10/2014.	—
8	7 x 12 extract of Gat No. 523 for the year 1989-1990 to 1998-1999 dated 08-10-2014.	—
9	Consolidated Extract of Khate No. 205 of village Mouje Savarde Patankar, Tal. Radhanagari, Dist. Kolhapur	—

05. The defendants have filed the following documents in support of their defence which I have thoroughly perused-

Sr.No.	Description	Exhibit
1	8-A Extract of Khate No. 257 of Dattatraya Shankar Patil dated 19/11/2014	—
2	7 x 12 extract of Bhumapan No. 521 dated 19-11-2014	—
3	7 x 12 extract of Bhumapan No. 523 dated 19-11-2014	--

06. The following points crop-up for my consideration on which I record my findings together with reasons therefor as under-

Sr.No.	POINTS OF DETERMINATION	FINDINGS
1.	Whether the plaintiffs have prima facie case?	IN NEGATIVE.
2.	Whether the plaintiffs would suffer irreparable loss if injunction is not granted in his favour?	IN NEGATIVE.
3.	In whose favour the balance of convenience lies?	The Defendants.
4.	What order?	Accordingly.

REASONS

07. AS TO THE POINTS NO. 1 TO 3 :

As these points are intermingled I decide them together.

From the perusal of the revenue records of the suit property, it is evident that the names of the defendants are appearing in the records to the extent of 4 annas share in the suit properties. It is the contention of the plaintiffs that the said entry of "4 annas" is made mistakenly. I failed to understand, if that even if the said contention is upheld, how a Civil Court can go beyond the revenue record made available for its perusal. I have also perused the plaint alongwith the application. I failed to observe any pleadings that may show that the plaintiffs have preferred any appeal, revision or suitable litigation challenging the said entry. In such a situation the said entry becomes final and it has probative value as evidence. The presumption relating to the revenue record is rebuttable. Hence, the plaintiffs are at liberty to lead cogent evidence and rebut the same. However, at this juncture, the said entry is valid and can not be discarded.

08. The question of nature of the suit properties goes to the root of the subject matter of the suit. The plaintiffs are claiming that the suit properties are the ancestral properties, while the defendants are claiming that they are separate properties as being partitioned. Both these alleged facts are required to be proved by the parties by leading appropriate evidence. At this stage of the suit, I restrict myself from entering into its merits and comment upon it.

09. From the above discussion, I observe that the plaintiffs have not challenged the said allegedly wrong entry. Further, if the contention of the plaintiffs as to the nature of the suit properties is accepted, then also injunction can not be granted to him. The suit properties if admitted to be joint properties the defendants become the co-sharers/ co-owners of the same. The basic principle of Law is that injunction can not be granted against a co-owner. Hence, the plaintiffs neither have prima facie case nor they would suffer any irreparable loss if the injunction is not granted in their favour. The balance of convenience also lies in favour of the defendants. To succeed in the application for temporary injunction, plaintiff has to prove all the three ingredients viz, prima facie case, irreparable loss and balance of convenience, conjunctively. If the plaintiff, fails to prove either of these, he is not entitle for the relief. In the instant case, the plaintiffs have failed to prove either of the ingredients.

Hence, they are not entitle for the relief of injunction as prayed for.
Therefore, I pass the following order-

ORDER

01. The application below Exhibit no.5 is rejected with costs.

Radhanagari.

sd/-

Date 03/01/2015.

(A. S. Atre)

Civil Judge, Jr. Dn., Radhanagari.

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	S. R. Sarnaik
Name of Court	Civil Judge, Junior Division & Judicial Magistrate, First Class, Radhanagari.
Date of Dictation	03/01/2015.
Order signed by the P.O. On	03/01/2015.
Order uploaded on	03/01/2015.