

MHLA050001002020



Order Below Exhibit-5

The plaintiff has filed this application under Order XXXVIX Rule 1,2 of C.P.C. for restraining defendants No. 5 to 7 from taking compensation amount from defendants No. 3 and 4; and restraining defendants No. 5 to 7 from disturbing peaceful possession of the plaintiff.

2. Defendants No. 5 to 7 have filed say at Exh. 24, 26 and 27 and taken strong objection with prayer to reject the application of the plaintiff. It is stated that the plaintiff has no concern with the suit land and the compensation amount.

3. Heard arguments of both sides at the length. It is argued by the plaintiff that the plaintiff is owner and possessor of the suit land by virtue of sale deed. Some of the land out of the suit land was acquired by the State Government for National Highway. The plaintiff is entitled for the compensation. But due to mistake in revenue record, defendants No. 5 to 7 are claiming that amount. They are also disturbing possession of the plaintiff. So, temporary injunction be granted against them.

4. Following points arise for determination along with their answers.

Sr. No.	POINTS	ANSWERS
1	Does the plaintiff prove that prima facie case is in his favour ?	No
2	Does the plaintiff prove that balance of convenience lies in his favour ?	No
3	Does the plaintiff prove that he will suffer irreparable loss if temporary injunction is not granted in his favour ?	No
4	What order ?	Application is rejected

REASONS

5. Points No 1 to 3 are interrelated with each other, so I answer them together.

POINTS No. 1 TO 3 :-

6. This suit is for declaration and injunction. It is contention of the plaintiff that he is owner and possessor of the land in block No. 169 of area 0H 52R. The suit land is situated at village Gugdal, Tal. Ahmedpur, Dist. Latur. The boundaries of the suit land are towards East-land of Narayan Maroti Badane, towards West-Ahmedpur-Nanded road, towards South-remaining land of Narayan Badane and towards North-land of Pundalik Madhav Dhakne. The plaintiff has set up his hotel in the suit land and he has possession in the land. The plaintiff had purchased the suit land from Bhagwan Maroti Badane for Rs. 3,75,000/- by sale deed No. 872/2012 dated 27.03.2012. The mutation entry No. 446 was taken in the name of the plaintiff in block No.170.

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7. In view of this contention of the plaintiff, his sale deed is read. In his sale deed it is clearly mentioned that the plaintiff had purchased the land area OH 52R in block No. 170 from Bhagwan Maroti Bhadane. Mutation Entry No. 446 clearly shows that name of the plaintiff was mutated as owner to the land in block No. 170. It is not seen that the plaintiff had purchased the land in block No. 169.

8. It is contention of the plaintiff that the revenue authority has not maintained the correct record of block No. 169, 170, 171 of corresponding old survey No. 46/1, 46/2 and 47 respectively. But the documents produced by the defendants with list Exh. 53 show that old survey No. 46/1 was new block No. 169, old survey No. 46/2 was new block No. 170 and old survey No. 47 was new block No. 171.

9. Advocate for the plaintiff relied on the decision in **Surajbhan and others Versus Financial Commissioner and others, in Civil Appeal No. 1971 of 2007 before the Hon'ble Supreme Court of India.**

He further relied on the decision in **Jitendra Sing Versus The State of Madhya Pradesh and others, in Special Leave Petition (C) No. 13146 of 2021 before the Hon'ble Supreme Court of India.**

On relying these decisions Advocate for the plaintiff submitted that the mutation entries in revenue record are only for fiscal purpose. On going through these decisions, it appears that the facts are different. Therefore, these decisions are not applicable in the present case.

10. It is contention of the plaintiff that his vendor Bhagwan Maroti Badane had elder brother Narayan Maroti Badane. Narayan

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Badane had purchased land area 1H 97R in block No. 169 by sale deed No. 1444/2010 dated 30.4.2010. If that sale deed is read then it appears that Narayan Badane had purchased the land from Manohar Madhav Kendre in block No. 170 area 1H 56R and block No. 171 area 0H 41R. Narayan had not purchased land in block No. 169. Thus, the contention of the plaintiff has no base of documentary evidence.

11. Pandhari Laxman Surnar had purchased land in survey No.46/1 on 22.4.1993. Manohar Madhavrao Kendre had purchased land in survey No. 46/2 and 47. Their sale deeds are produced on record by the plaintiff.

12. It is contention of the plaintiff that due to mistake of revenue authority in block numbers and corresponding old survey numbers the plaintiff had no option to execute the sale deed with wrong block number. If the person has possession on a particular area in the land then he has to execute the sale deed mentioning the four boundaries as well as the block number of the land. Buyer must be cautious while doing transaction. Before executing the sale deed the plaintiff could have ensured as to in which block number he has possession. He could have made application to the revenue authority to get the mistake in block numbers corrected before executing the sale deed. Now, the plaintiff cannot say that there is mistake in the revenue record. The documents on record show that the contention of the plaintiff is against the revenue record.

13. 7/12 extract of block No. 169 is filed by the plaintiff as well as defendants which shows the names of defendants No. 5 to 7 and others and not of the plaintiff. Name of the plaintiff appears in 7/12 extract of

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block No. 170. There is no record to show that the plaintiff has made attempts to get the mistake corrected by the revenue authority. In fact, there is no any mistake seen from the 7/12 extracts, mutation entry No. 446 and the sale deed of the plaintiff and Narayan Badane.

14. The defendants have produced copy of the letter dated 19.4.2019 sent by District Superintendent of Land Record to Dy. Director of Land Records, Aurangabad in which it is mentioned that the owners of survey No. 46/1, 46/2 have sold the land by different sale deeds and at that time without keeping correlation of map and block numbers and by showing wrong boundaries, and so, the entries in 7/12 are taken on basis of the sale deed of block numbers. The difference in block numbers and possession or cultivation is no mistake in consolidation scheme.

15. The Award in Land Acquisition No. 2016/LAQ/NH-361/CR-18 is produced on record. The compensation is awarded to the defendants No. 5 to 7 and others for block No. 169, 170 and survey No. 46/1 but it is withheld until correction in the block numbers.

16. The documents filed by the plaintiff and the defendants on record do not prima facie show that the plaintiff has ownership and possession in the block No. 169. So it can to be said that the defendants No. 5 to 7 are disturbing possession of the plaintiff. So, the balance of convenience does not lie in favour of the plaintiff. The plaintiff will not suffer any loss if the temporary injunction is not granted. Hence, I answer these points in the negative.

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Special Civil Suit No. 7/2020
Ajit V/s Union of India and others

POINT No. 4 :-

17. In view of the above discussion and answers to points No. 1 to 3, this application is liable for rejection. Hence, in the result, I pass the order;

O R D E R

1. Application Exh. 5 is rejected.
2. Costs in main cause.

Date : 18.1.2022

(P. A. Savadikar)
Civil Judge, Senior Division
Ahmedpur