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Duration : 5Y.5M.28D.

IN THE COURT OF THE CIVIL JUDGE { S.D. }, AT NILANGA.

(Before : Shri. A. D. Gondane)

REGULAR CIVIL SUIT NO. 180 OF 2005.

Exh.No. _____.

Sudhir s/o Nivrattirao Paulkar, }
Age 34 years, Occu. Business & Agri., }
R/o Latur, Tq. & Dist. Latur. } .. **PLAINTIFF.**

V E R S U S

1. Sopan Madhavrao Paulkar, }
Age 65 years, Occu. Agriculture, }
R/o Shirur Anantpal, Tq. Shirur }
Anantpal. }
2. Bhagwat Goroba Paulkar, }
Age 38 years, Occu. Agriculture, }
R/o As above. }
3. Yogeshwar s/o Pandit Waghmare, }
R/o Hadga, Tq. Nilanga, }
Dist. Latur. } .. **DEFENDANTS.**

CLAIM :- Suit for declaration of ownership & perpetual injunction.

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Mr. M. R. Jagtap, Advocate for the plaintiff.

Mr. C. J. Sabnis, Advocate for the defendants.
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J U D G M E N T .**(Delivered on 13.09.2010)**

1. The present suit is filed by plaintiff Sudhir Paulkar against the defendant No.1 to 3; Sopan, Bhagwat and Yogeshwar, for declaration of title and for perpetual injunction, for order restraining the defendants from causing interference to the plaintiff's right of enjoyment of suit property, in perpetuity.

2. The facts giving rise to the present suit are briefly stated as under :-

- That, the plaintiff is resident of village Shirur-Anantpal and at present he is residing at Latur. It is averred that the defendant No.1 is father's brother of plaintiff and defendant No.2 is cousin. It is averred that the property bearing Grampanchayat house No.84 and 85 situated in village Turukwadi, Tq. Shirur-Anantpal is owned and possessed by plaintiff. It is averred that the suit property subsequently re-numbered as 88 and 89. It is averred that the suit properties are purchased by plaintiff on 13.05.1988 for the consideration of Rs.2,000/- from one previous owner Dnyanoba Kalle, admeasuring 66 ft. south-north and 33 ft. east-west. It is averred that thereafter the plaintiff has purchased open land adjoining to the land, which is previously purchased and its area is admeasuring 66 X 33 ft. and the said land is purchased by him on 10.06.1991 for the consideration of Rs.5,000/-. It is averred that after executing registered sale-deed plaintiff has got mutated his name in the record of Grampanchayat

of assessment register. It is averred that the defendant No.1 to 3 have no concern with the suit property, however, the defendants got mutated their names in the record of Grampanchayat in respect of suit property. It is averred that the suit property is still in possession of the plaintiff, however, the defendants are trying to encroach upon the suit land and are trying to construct the tin-shed. It is averred that the plaintiff after purchasing the suit property has converted the suit property into non-agricultural purpose. It is averred that the defendants denied the title and possession of plaintiff over the suit property on 13.02.2005, therefore, plaintiff has filed present suit.

3. The suit summonses are issued to the defendants. The defendants appeared and they have filed their written statement below Exh.12. The defendants in their written statement specifically denied that the plaintiff is owner and possessor of the suit property. The defendants also specifically denied that previous owner Dnyanoba executed two sale-deeds in favour of plaintiff. The plead of the defendants is that the father of plaintiff, namely Nivrattirao has filed one suit bearing No.341/2002 before the Civil Judge (J.D.), Nilanga against the defendants and one Vidyasagar and the plaintiff's father acknowledged the possession of the defendants over the suit property, therefore, plaintiff is estopped from claiming ownership and possession over the suit plot and the judgment in R.C.S.No.341/2002 operates res-judicata. Further defence of the defendants is that the suit property though purchased in the name

of plaintiff, it is purchased out of the income and stock of joint family property. It is averred that the father of plaintiff, namely Nivrattirao and father of defendant No.2, namely Goroba and defendant No.1 Sopan and one Maruti were the real brothers. It is averred that these four brothers purchased the suit property jointly. It is averred that the partition of the joint family property is effected on 25.03.1996 and in the partition, the suit property is allotted to the share of Goroba, who is father of defendant No.2 and Sopan. It is averred that since 25.03.1996 father of defendant No.2 and defendant No.1 become the absolute owner and possessor of the suit property. It is averred that the allotment letter is reduced in writing in the name and style "Watanipatra" on the stamp paper dated 25.03.1996. It is averred that the defendants being owner of the suit plots, they have obtained necessary permission dated 12.08.2002 from Grampanchayat, Turukwadi for construction and erected tin-shed thereon and the suit of plaintiff is not tenable. The defendants prayed that the suit is filed by plaintiff with intent to harass the defendants, therefore, they claim for compensatory cost Rs.5,000/-.

4. On perusal of the record and proceeding, it appears to me that the present suit is decided by this Court on merit on 21.08.2007 and the plaintiff Sudhir preferred appeal before the District Judge, Nilanga, where the District Judge, Nilanga by its judgment remanded the case for fresh decision after framing the issues. In view of the directions in appeal, I framed additional issues.

5. On perusal of the plaint and written statement and after inspection of the documents submitted on record, issues have been framed on 25.082008 vide below Exh.27.

6. After scrutiny of evidence of plaintiff and his witnesses and after inspection of the documents exhibited in the evidence of plaintiff witnesses and after scrutiny of evidence of defendants and their witnesses and after inspection of the documents exhibited in the evidence of defendants and their witnesses and after dealing with the questions of facts, following issues arises for my determination, to which I proceed to record finding therein stated as under :-

<u>I S S U E S</u>	<u>F I N D I N G S</u>
1) Does the plaintiff prove that the partition of the joint family properties was effected in the year 1972 ?	In the affirmative.
2) Do the defendants prove that partition of the joint family properties was effected on 25.03.1996 and suit properties gave to their shares ?	In the negative.
3) Does the plaintiff prove that the suit properties are his self-acquired properties ?	In the affirmative.
4) Whether defendants invade or tried to invade plaintiff's right of enjoyment of suit property ?	In the affirmative.

ISSUES**FINDINGS**

- | | |
|---|---------------------|
| 5) Whether invasion is such that compensation in money would not offered adequate relief ? | In the affirmative. |
| 6) Whether plaintiff is entitled to claim relief of declaration of title in his favour ? | In the affirmative. |
| 7) Whether plaintiff is entered to claim relief of perpetual injunction in his favour as prayed ? | In the affirmative. |
| 8) What order as to costs & decree ? | Suit is decreed. |

REASONS**As to issue No.1 :-**

7. In this case plaintiff approached to the Court with allegations that he is owner and possessor of the suit land, however, defendants; Sopan and Bhagwat are claiming ownership and possession over the suit property and causing interference to his possession, therefore, he approached to the Court claiming relief of declaration of title and perpetual injunction. Whereas, the defendants have raised their plea that the suit property is joint family property, which is purchased by joint efforts of four brothers, namely Goroba, Sopan, Nivratti and Maruti and partition has been effected on 25.03.1996 and in partition suit property is allotted to the share of defendants. Where, the plaintiff further

made attack on the defendants that the partition of the suit property is already effected in the year 1972 between deceased Madhavrao and his four sons; Goroba, Sopan, Nivratti and Maruti. Therefore, first issue is taken for discussion is that whether partition of the suit property has been effected in the year 1972 between deceased Madhavrao and his four sons, namely Goroba, Sopan, Nivratti and Maruti.

8. So far as the relations between plaintiff and defendants is concerned, their relations are not disputed. On perusal of the record, it appears that one deceased Madhavrao had four sons, namely Goroba, Sopan, Nivratti and Maruti and plaintiff Sudhir is son of Nivratti and one defendant No.2 Bhagwat is son of Goroba.

9. While dealing with the question, we have to proceed to dealt with the evidence of plaintiff and his witnesses. So far as to dealt with the question of partition effected in the year 1972 is concerned, in support of the claim the plaintiff Sudhir has examined himself. His evidence is recorded below Exh.28. The plaintiff thereafter examined P.W.2, 3 and 4, namely Suhash, Maruti and Kishanrao. Their evidence is recorded below Exh.35, 121 and 124, respectively. While dealing with the question, I would like to state that suggestive questions were put up to the plaintiff Sudhir and in the cross-examination plaintiff admits the facts as follows - “हे म्हणणे बरोबर आहे की, माझे वडील व चुलतेमध्ये झालेल्या वाटण्या मला कबूल आहे.” The plaintiff further voluntaries

that - “आम्ही सन 1972 साली विभक्त झालो आहोत.” In this regard, we have to proceed to dealt with the evidence of defendant Vidyasagar, who is son of Goroba. In this case defendant No.1 and 2 did not appear, but they appointed Vidyasagar as their representative for conducting the trial. The defendants' power of attorney holder, namely Vidyasagar has filed two affidavits. The first affidavit filed by him on dated 17.01.2007 and second affidavit is filed on 25.08.2009. What is admitted by him in his cross-examination, old affidavit below Exh.57 at page No.7 in para No.13 that “वडिलोपार्जित जमीनी चौघा भावांच्या नांवाने वेगवेगळी नोंदली आहे व ती जमीन माझे वडिल व चूलत्याच्या नावाने वेगवेगळी नोंदली आहे.” The defendants' power of attorney holder Vidyasagar further admits in his evidence that “आमच्या कुटूंबात झालेले जमीनीचे किंवा जागेचे व्यवहार माझे वडील किंवा चूलते यांना माहित आहेत.” Now, it is made clear that the defendants did not examine themselves. However, they appointed Vidyasagar to lead evidence on their behalf.

10. Now, we have to proceed to dealt with the evidence of uncle Maruti of the witness Vidyasagar. Being he is a member of the joint family I do not have any hesitation to disbelieve his testimony, because he had knowledge about the affairs in his joint family. He is witness No.3 of the plaintiff. What is deposed by him in his evidence that - “आमच्या एकत्र कुटुंबाच्या तोंडी वाटण्याआधारे आमचे वडील माधवराव आनंदराव माळी यांनी आम्हा चौघा भावामध्ये वडीलोपार्जित शेतमिळकत व घर मिळकतीच्या वाटण्या 1972 ला करून दिल्या व त्यानंतर संबंधीत कार्यालयाशी संपर्क साधून सदर वाटणी विषयी संबंधीत अधिका-याना माहिती देऊन फेर क. 981 मंजूर

करून घेतला व तो प्रकरणात दाखल आहे. त्या वाटणीपत्रातील मी एक हिस्सेदार आहे व ते वाटणीपत्र माझ्या समक्ष तसेच वादीचे वडील निवृत्ती तसेच प्रतिवादी स्वतः सोपान तसेच प्रतिवादी क.2 चे वडील मयत गोरोबा हे व गावातील पंच माधवराव बिराजदार, बंडाप्या वलांडे व खरोसा येथील आमचे मावळे किसनराव विठोबा क्षिरसागर हे व इतर पंच सदर तोंडी वाटणीवेळी हजर होते.” After perusal of the evidence of the witness Maurti, it appears that on the basis of partition in the year 1972, mutation entry was recorded bearing No.981. Not only that, the defendants also have placed mutation entry on the record regarding partition took place in the year 1972. That document is bearing entry No.981 at Exh.184 and that document is at Exh.122. When both parties are relying upon the same document, therefore, I have no hesitation to read the document. On perusal of the mutation entry bearing No.981 relied upon by plaintiff as well as defendants, it appears to me that deceased Madhavrao has effected the partition of his ancestral joint family property by dividing the said property in five shares. One share is retained by him bearing land survey No.112/B admeasuring 8 Acre 03 Gunthas. Another share is allotted to his son Goroba in respect of land survey No.88/A admeasuring 5 Acre 25 Gunthas. The next share is allotted to Sopan in respect of land survey No.75/A and 97/A admeasuring 7 Acre 24 Gunthas and 2 Acres. Then, the next share is allotted to the share of Nivratti, who is father of plaintiff, in respect of land survey No.76/B, 96/B and 97/C admeasuring 4 Acre 14 Gunthas, 3 Acre 31 Gunthas and 2 Acre 39 Gunthas, respectively and last share was allotted to the son Maruti in respect of land survey No.88/A admeasuring 5 Acre 25 Gunthas.

From the recital in the mutation entry, it prima facie appears to me that the partition of the joint family property is effected in the year 1972. Hence, I proceed to record finding of issue No.1 in the affirmative.

As to issue No.2 :-

11. Now, the next question before me is that whether partition of the joint family property effected on 25.03.1996 and thus, the burden lies on the defendants to prove the fact regarding partition effected in the year 1996, for which we have to proceed to deal with the evidence of defendants. Again, we have to proceed to deal with the evidence of power of attorney holder of defendants, namely Vidyasagar below Exh.57. What is deposed by him in his evidence i. e. new affidavit dated 25.08.2009 that - “कौटुंबिक कलहामुळे दिनांक 25.03.1996 वादी व प्रतिवादी यांचे वडील इतर नातेवाईक व पंचाचे मध्यस्थीने वाटण्या झाल्या व त्यानुसार हे की, दिनांक 25.03.1996 चे वाटणीत वादीचे नावावर तुरुकवाडी येथे खरेदी केलेले दोन प्लॉटस पेकी 1 प्लॉट क्षेत्र 66 x 33, प्रतिवादी क. 1 सोपान याचे हिस्से वाटणीस आला तर दुसरा प्लॉट क्षेत्र 66 x 33 माझे वडीलांचे हिस्से वाटणीस आला.” Though the witness deposed that suit property was allotted to the share of his father and his uncle Sopan, his evidence do not discloses, how much property was taken for partition and how many shares were prepared and what particular share was allotted to a particular share-holder. While dealing with the evidence of defendants' witnesses, namely Sanjay, Nijam, Salim Sayyad, though they deposed that suit property is

allotted to the share of defendants, their evidence is challenged in the cross-examination and these witnesses in their cross-examination admit that they do not know what property was taken for partition and which particular share is allotted to the shareholders.

12. While dealing with the question, I would like to state that though the witness of defendants, Vidyasagar deposed about partition effected in the year 1996, what he further deposed that the original partition-deed dated 25.03.1996 is in possession of the plaintiff and then xerox copies were prepared and allotted to each share-holder. The copy of the partition-deed is not exhibited in his evidence, but it is brought on record and given exhibit No.103. The uncle of the witness Vidyasagar, namely Maruti has denied that the false document was prepared regarding the partition dated 25.03.1996. Though the witness Vidyasagar deposed that the original partition-deed dated 25.03.1996 is in possession of plaintiff, he has not produced the document by issuing notice to produce the document. The procedure is prescribed by law. Nor he has examined the scribe of the document and attesting witnesses. Even if its authenticity is disputed, I have to peruse the recital in the so-called partition-deed Exh.103. The document recites that - “शिवाय खुल्ला प्लॉट तुरुकवाडी येथील 33 x 66 चा रजिस्ट्री झालेला. सदरी रजिस्ट्री श्री सुधीर यांचे नावाने आहे ति त्याना त्याचे नावावर करून देणेचा ठराव आहे.” The document further recites that - “तुरुकवाडी येथील 33 x 66 चा सुधीर यांचे नावाने असलेला प्लॉट संपूर्ण हिस्सेस आला आहे तो त्याचे नावाने करून देणेचा

ठराव आहे.” After perusal of the partition-deed, it prima facie appears to me that the plaintiff is not party to the partition-deed and such partition even if it is assumed for a moment that the partition has taken place, is not binding to him. Thus, after careful scrutiny of the evidence of defendants' witness Vidyasagar and the evidence of other witnesses, it appears to me that the defendants' witness Vidyasagar and other witnesses, so far as the partition-deed dated 25.03.1996 is concerned, it appears to be very doubtful and thus, I am not relying upon it. Hence, I proceed to record finding of issue No.2 is in the negative.

As to issue No.3 :-

13. Now, the next question before me is that whether plaintiff is owner and possessor of the suit properties, for which we have to proceed to deal with the evidence of plaintiff Sudhir, who deposed in his evidence that he is owner of Grampanchayat old plot No.84 and 85 and new plot No.88 and 89. He deposed in his evidence that he has purchased the suit plot 33 X 66 ft. on 13.05.1988 for the consideration of Rs.2,000/- from one original owner Dnyanoba Laxman Kalle. He further deposed that again he has purchased open land adjoining to the same plot admeasuring 33 X 66 ft. on 10.06.1991 for the consideration of Rs.5,000/- from original owner Suhash Durukakar and Ashok Durukakar. The plaintiff is relying upon these two documents Exh.36 and 37. So far as the purchasing of the suit plots in the name of plaintiff is concerned, the said fact is admitted by the defendants' witness Vidyasagar in his affidavit. The witness Vidyasagar in his evidence

below Exh.57, old affidavit dated 17.01.2007 at page No.8 admits that - “सुधिर पौळकरच्या नांवाने कोणती जागा होती हे मला माहीत नाही. मी पून्हा सांगतो की, ग्रामपंचायत नं. 88 व 89 हा सुधिरच्या नांवाने होता.” The witness Vidyasagar in his cross-examination at page No.6 in para No.14 in affidavit recorded on 25.08.2009 clearly admits as follows - “हे खरे की, वाद भुखंड दि. 13/5/1988 रोजी वादी सूधीरच्या नांवाने खरेदी करण्यात आला. हे खरे की, वादीने दि. 10/6/1991 रोजी त्यालगतचा भुखंड रु.5000/- मध्ये खरेदी केला. हे खरे की, खरेदीखताआधारे भुखंड क्र. 84 व 85 ची कर आकारणी पूस्तीकेत ग्रामपंचायतमध्ये नोंद घेण्यात आली. सदरचे भुखंड क्र. 84 व 85 वादीच्या नावाने 1996 पर्यंत होते.” The fact regarding purchase of suit plots are admitted by the defendants' witness Vidyasagar.

14. Now, the further fact is required to be proved by the defendants as to whether fund of joint family property was utilized by the plaintiff for purchase of suit property. In this regard, we have to peruse the evidence of witness of defendants, namely Vidyasagar. The evidence of witness Vidyasagar do not discloses what fund of the joint family property was available with the plaintiff and his father at the time of purchase of suit property. Moreover, after dealing with the question of facts in the finding of issue No.1, I reached to the conclusion that the partition of the joint family property was effected in the year 1972 and the suit plots were purchased by the plaintiff on 13.05.1988 and 10.06.1991. Thus, there is no evidence on the record to show that the joint family fund was available to the plaintiff or with the

father of plaintiff for purchase of suit plots. From the admission of the defendants' witness Vidyasagar, it clearly appears to me that the plaintiff after purchase of suit plots recorded his name in the record of Grampanchayat and his name was continued till 1996.

15. Then the next question before me is that on what basis the entries regarding the suit plots were made in the name of defendants. In this regard, we have to proceed to deal with the evidence of defendants' witness No.6 Shivaji Chate, who is Gramsevak of village Turukwadi, below Exh.90. What is deposed by him in his evidence that he is serving as Gramsevak of village Turukwadi since December, 2000 and he has issued Form No.8 in respect of the suit plots bearing property No.88 and 89 and the property No.89 is recorded in the name of Bhagwat and property No.188 is recorded in the name of Sopan. His evidence is challenged by the plaintiff. The witness clearly admits that on what basis the entries on the assessment register was taken in the name of Bhagwat and Sopan. The witness further admits that the plots were converted to non-agricultural in the name of plaintiff Sudhir Nivratti and it's order regarding N. A. are at Exh.95 and 96. From the evidence of D.W.5 Dattatraya one thing is made clear that he has issued certified copy of assessment register in respect of the suit plots in the name of defendants; Sopan and Bhagwat, though the N. A. order obtained in the name of plaintiff.

16. While dealing with the evidence, I would like to state that whether mere record of entries in the name of defendants amounts to devolution of title from plaintiff to the defendants. In

this regard, we have to refer to a decision of our Apex Court reported in **2003 SAR (Civil) 929 (SC) – in R. V. E. Venkatchala Gounder Vs. Arulmigu Viswesaraswami & V. P.** I perused the judgment relied upon by the plaintiff's counsel, wherein our Apex Court has laid down the principles that the entry in the Municipal record is not the evidence of title. The entry shows the person, who was held liable to pay rent and taxes to the Municipality. Relying upon the principles laid down by our Apex Court, I have to apply the same analogy in respect of the property record maintained by Grampanchayat. Thus, after perusal of the ratio laid down by our Apex Court, it prima facie appears to me that mere recording entry by Municipal authority or Grampanchayat authority do not devolve any ownership from one person to another person and thus, though the defendants caused to change the record of Grampanchayat in the name of defendants, the title of the plaintiff in respect of suit plots do not devolve in favour of the defendants.

17. In this case learned counsel of the defendants in their written statement raised the plea that the father of plaintiff, namely Nivratti has filed one suit i. e. R.C.S.No.341/2002 and the said suit was dismissed, therefore, it operates as res-judicata. While dealing with the question, we have to proceed to deal with the judgment in R.C.S.No.341/2002. After perusal of the certified copy of judgment in R.C.S.No.341/2002 brought on record by the defendants, Exh.105, it appears to me that the issue was raised in respect of the suit property and it was held that the father of

plaintiff Nivratti was not the owner of suit property. However, after dealing with the facts brought before me on the record, I reached to the conclusion that the plaintiff is owner of the suit property and not his father and the plaintiff was not party to the proceeding in R.C.S.No.341/2002. Therefore, the judgment in R.C.S.No.341/2002 is not binding to the plaintiff and thus, it do not operates res-judicata.

18. Now, the next question before me is that whether plaintiff is in possession of the suit property. In this regard, we have to peruse the evidence of plaintiff Sudhir below Exh.28. What is deposed by him in his evidence that after obtaining N. A. permission he is in real possession of the suit property and plaintiffs have no concern whatsoever with the suit properties. The evidence of the plaintiff is denied. In support his testimony, plaintiff has examined witnesses; Maruti and Kishanrao. Their evidence is recorded below Exh.121 and 124. These two witnesses deposed that the plaintiff is owner and possessor of the suit property. The witness Maruti is uncle of the plaintiff as well as uncle of the witness Vidyasagar and brother of defendant No.1 Sopan. Therefore, I have no reason to disbelieve his testimony. From the evidence of witness of defendants, Vidyasagar, it prima facie appears to me that he has obtained the documents from the Grampanchayat i. e. certified copies of entries of assessment register, where the witness of defendants; Shivaji Chate clearly admits the fact in his evidence that the entries in the assessment register was made without any basis. In this regard, we have to peruse certain admissions given by independent witness of

defendants, namely Shivaji Chate. This witness in his evidence below Exh.90 clearly admits the fact that - “सोपान व भागवत हे वरील जागेवर राहत नाहीत.” I have no reason to disbelieve the admission given by witness Shivaji Chate, because he is officer of Grampanchayat. From the admission given by the witness Shivaji Chate, it prima facie appears to me that defendants are not in possession of the suit property. Therefore, so far as the point of possession is concerned, I relied upon the testimony of plaintiff and his two witnesses, namely P.W.3 Maruti Paulkar and P.W.4 Kishanrao Kshirsagar. Thus, after careful scrutiny of evidence of plaintiff as well as evidence of plaintiff's witnesses and evidence of defendants' witnesses, it prima facie appears to me that the plaintiff is in possession of the suit property. Hence, I proceed to record finding of issue No.3 is in the affirmative.

As to issue No.4 :-

19. Now, the next question before me is that whether defendants invade or tried to invade plaintiff's right of enjoyment of suit property. In this regard, we have to peruse the recital in the written statement below Exh.12. What is averred by the defendants in their written statement that the suit property is joint family property and on the basis of partition dated 25.03.1996 it was allotted to the share of defendants. Thus, the defendants claiming title and possession of defendants over the suit property, which clearly appears to me that the defendants are invading or

tried to invade plaintiff's right of enjoyment of suit property. For the reasons recorded above, I proceed to record finding of issue No.4 is in the affirmative.

As to issue No.5 :-

20. Now, the next question before me is that whether invasion is such that compensation in money would not offered adequate relief. While dealing with the question, I would like to state that as I have already reached to the conclusion that the defendants are trying to invade plaintiff's right of enjoyment of suit property. This fact is sufficient to reach me to a conclusion that the plaintiff will suffer irreparable loss, if the defendants are not restrained from causing interference to the plaintiff's right of enjoyment. Therefore, I proceed to record finding of issue No.5 is in the affirmative.

As to issue No.6 :-

21. Now the next question before me is that whether plaintiff is entitled to claim relief of declaration of title in his favour in respect of suit property. While dealing with the question, I would like to state that as while recording finding of issue No.3 I have already reached to the conclusion that the plaintiff is exclusive owner of the suit property. Therefore, I proceed to record finding of issue No.6 is in the affirmative.

As to issue No.7 :-

22. Now, the next question before me is that whether plaintiff is entitled to claim relief of perpetual injunction as prayed. While dealing with the question, I would like to state that granting relief of perpetual injunction is based on equity and the law of equity is codified by the provisions of Specific Relief Act. Section 36 of the Specific Relief Act gives discretion of granting perpetual injunction to the Court and the Court has to exercise its discretion judiciously. As I have already reached to the conclusion that the plaintiff is owner and possessor of the suit property and the plaintiff has proved by clear and cogent evidence on the record that he is owner and possessor of the suit property, I have sufficient reason to exercise my discretion of granting injunction in favour of plaintiff and hence, I exercise my discretion of granting injunction in favour of plaintiff and proceed to record finding of issue No.7 is in the affirmative and pass the following order :-

ORDER

1. The suit of the plaintiff is hereby decreed with costs.
2. The plaintiff is hereby declared the owner and possessor of the suit property.

3. The defendants are hereby restrained from causing interference to the plaintiff's right of enjoyment over the suit property, in perpetuity.

4. Decree be drawn-up accordingly.

Date : 13.09.2010.

(A. D. Gondane)
Civil Judge Senior Division,
Nilanga.
