

Order below Exh.05
(Passed on 17th August, 2018)

1] Plaintiff has filed this application under Order 39 R 1 & 2 of Code Of Civil Procedure, 1908 in respect of 10 R land out of land Survey No.82/B/2 situated at village Matola, Tq. Ausa Dist. Latur (Hereinafter for the sake of brevity referred to as the “**The Suit property**”) for restraining the defendants from obstructing plaintiff in his peaceful possession.

2] Defendant No.1 to 4 failed to file say cum written statement. Hence, application proceeded without say of defendants.

3] Heard Learned Adv Shri. P.V. Kohale for plaintiff .

4] Considering the rival submissions, following points arise for determination, to which my findings thereon for the reasons are as under :-

	<i>POINTS.</i>	<i>FINDINGS.</i>
1.	Who established prima facie case ?	Plaintiff
2.	In whose favour balance of convenience lies ?	Plaintiff
3.	Who will suffer irreparable loss?	Plaintiff
4.	What order ?	As per final order.

:: REASONS ::

As to point Nos.1 to 3 :-

5] The discussion and appreciation of evidence for point Nos.1 to 3 is common, hence they are clubbed and answered by me

in consonance for the sake of brevity and foreclosing the repetition of the facts.

6] Tersely, case of the plaintiff is that, she has purchased the suit property on 26-7-2013 from Mathurabai Somwanshi and Shesherao Sawant. Since thereafter she is owner and possessor of the suit property. She is cultivating her land with the help of her husband and servants and grown crop of sugarcane. The suit property was original property of relatives of defendants and defendants intended to purchase the same. But as plaintiff has purchase the property, defendants are trying to encroach upon the land of plaintiff and obstructed plaintiff's possession over the suit property. Therefore, plaintiff has filed this suit for permanant injunction and by way interim relief sought to restrain the defendants from obstructing his peaceful possession over the suit property.

7] On perusal of the copy of registered sale-deed dated 26-7-2013 it transpires that, plaintiff has purchased 10 R land from west-south corner of the property of Mathurabai and Shesherao Sawant for consideration of Rs.60,000/- out of Survey No.82/B/2. Accordingly, the mutation No.3303 was allowed and name of plaintiff entered in the 7/12 extract of the suit property. The 7/12 extract entries for the year 2016-2017 mentions name of the plaintiff as owner and possessor of the suit property. Since the defendant failed to file say to this application, entire case of plaintiff along with documents gone unchallenged. Therefore, prima-facie it is seen that, plaintiff is the owner and possessor of the suit property.

8] It has been stated on oath by plaintiff that, defendants started obstructing his possession over the suit property and also

trying to encroach upon it. Defendant has not challenged the suit. Therefore, as the case of plaintiff is unchallenged, it is prima-facie seen that defendants have obstructed the possession of the plaintiff over the suit property. Possession of plaintiff over the suit property being lawful, plaintiff is entitled to enjoy the same and defendants have no right to obstruct the same. Therefore, plaintiff is entitled for relief of injunction. If plaintiff is not protected by way of injunction, he will not be able to enjoy the suit land and will suffer the irreparable loss. The balance of convenience also lies in favour of plaintiff. Hence, I answer points No.1 to 3 in the affirmative and proceed to pass the following order.

ORDER

- [1] Application is hereby allowed.
- [2] Defendants are hereby restrained from obstructing the plaintiff's possession over the suit property.

Dated : 17/08/2018.

(V. D. Bhosale)
Civil Judge J.D. Ausa.