

ORDER BELOW EXH. 5
(Passed on 23/03/2022)

1. The present application is moved by plaintiff under Order XXXIX Rule 1 & 2 of C.P.C for restraining defendants from obstruction over field Gat No. 55/ KhaAdm. 2 H. 18 R. situated at Tiwatghal Tq. Chakur Dist. Latur. The four boundaries of said property concerned as follows;

Towards East : Land of Kalyan Shinde
Towards West : Land of Pandurang Bidwe
Towards South : Land of Shesherao Bidwe
Towards North : Nala
 (hereinafter shortly refereed as '*Suit Property*')

2. Defendants No. 1 & 2 filed written statement and say on temporary injunction application at Exh.13 & opposed it on various grounds.

3. Points for determination along-with my findings and reasoning thereon as under.

Sr.No.	Point	Answer
1.	Whether plaintiff prove prima facie case?	Negative.

2.	Whether balance of convenience lies in favour of plaintiff ?	Does not survive.
3.	Whether irreparable loss will be caused to plaintiff if temporary injunction is not granted ?	Does not survive.
4.	What order ?	Application is rejected.

REASONS

Points no. 1 to 3 :-

4. To avoid repetition of facts & discussion, point No.1 to 3 are taken together for sake of convenience.

5. Learned Advocate for plaintiff submitted that plaintiff filed suit for declaration & injunction against defendants. The plaintiff is exclusive owner & possessor of suit property which is described in par No.2 of application. The plaintiff had purchased said property for consideration of Rs. 55,000/- through registered sale deed bearing Day Book No. 2351/1990 from Laxmibai Dhope. The suit land is self acquired property of plaintiff. Husband of plaintiff & his brother separated & partitioned their joint family properties. On 14/06/2020 defendant obstructed & beaten to plaintiff in suit land. So, the plaintiff had filed complaint against defendant No.1 & 2. Defendants have no concern with suit land. Defendants are obstructing in the cultivation of the plaintiff over suit property. Lastly, plaintiff prayed for allowing temporary

injunction application against defendants.

6. Learned Advocate for plaintiff relied upon decision of **Hasmukh D. Desai v/s Bhimabhai Vashi, (1985) 2 GLR 644 of** Hon'ble Gujarat High Court & submitted that the plaintiff can claim injunction on the basis of title. However, fact of cited case & present case are different. He also relied upon decision of **Baban Ram vs Basdeo AIR 1982 All 414** & submitted that section 115 of Indian Evidence Act which is related with estoppel is not applicable in present case & statement made by plaintiff in previous case is not applicable in present matter. He also relied upon decision of **Chhaganwal Mehta vs. Patel Narandas Haribai AIR 1982 page No. 121** of Hon'ble Supreme Court. He submitted that there is difference between admission & estoppel. He submitted that admission is not conclusive. He submitted that admission can be withdrawn as per said decision. He also relied upon decision of **Santanu Kumar Das vs Bairagi Das AIR 1995 Ori 300** and submitted that there is no presumption that property purchased in the name of female member is joint family property. However, fact & circumstances of said case are different & with due respect of said decision of Hon'ble Court, it is not applicable at this stage.

7. Learned Advocate for defendants No.1 & 2 submitted that

defendants filed written statement vide Exh.13. He submitted that suit of the plaintiff is baseless. The plaintiff is not owner and possessor of suit property. It is not self acquired property of plaintiff. Husband of the plaintiff by name Shesherao Bidve, defendant No.1 & Prabhakar Bidve are real brothers & they are members of undivided Hindu family. They are having ancestral coparcenary agricultural land. Tatyaro Bidve who was father-in-law of the plaintiff. He sold lands to other person & purchased land in the name of plaintiff's husband, defendant No.1 & sons of plaintiff. Land field Gat No.55 Adm. 4 H.36 R. standing the name of husband of plaintiff Shesherao Bidve. Husband of plaintiff decided to sold 2 H. 18 of Gat No.55 for security of loan to Laxmibai Dope. It was again purchased on the name of plaintiff from joint family funds through sale deed bearing No. 2351/1990.

8. Brother of defendant No.1 Prabhakar demanded partition due to this reason they partitioned joint family excluding Tatyaro Bidve & sister of defendant No.1. In the year 2005, plaintiff & her husband objected separate cultivation of defendant No.1. So, defendant No.1 filed RCS No. 20/2005 against plaintiff and her husband. Husband of present plaintiff & present plaintiff admitted in W.S. that land Gat No. 55/1/kha & 55/2/Kha allotted in share of defendant No.1. They also admitted fact of partition. They also admitted that field Gat No.55/1/ Kha Adm. 61 R. allotted in the

share of Shesherao Bidve. So, present plaintiff estopped from claiming that suit land is exclusive and self acquired property of plaintiff. Suit land is joint family property of plaintiffs & defendants. In the month of May 2021, the plaintiff objected & obstructed defendant No.1 for common enjoyment of suit land. So, defendant No.1 filed civil suit bearing Spl.C.S. 79/2021 for partition & separate possession of joint family property including suit land against plaintiff & other family members which is pending before Hon'ble C.J.S.D Latur. Lastly, defendants prayed for rejection of temporary injunction application.

9. Learned Advocate for defendant relied upon decision of **Basant Singh vs Janki Singh AIR 1967 S.C. 341** & submitted that admission in previous suit may be used as evidence against such party in other litigation.

10. The provision of temporary injunction provided in order 39 Rule 1 and 2 C.P.C. as a discretionary relief. While exercising this discretion court has to see that requirements are made out by Plaintiffs.

(a) Existence of prima facie case as pleaded, necessitating protection of the plaintiffs right by issuing order of temporary injunction;

(b) When the need for protection of the plaintiffs are

compared with the or weighed against the need for the protection defendants rights, the balance of convenience lies in favour of the plaintiffs.

(c) Clear possibility of irreparable injury being caused to plaintiffs if the temporary injunction is not granted.

11. Heard both side. Perused record & documents. It is the case of the plaintiff that suit property is self acquired property of plaintiff and defendants are obstructing in peaceful possession of suit plaintiff over suit property. However, at this stage, nothing has been brought on record to show her separate income. At this stage, plaintiff has relied upon xerox copy of sale deed bearing No.2351/1990 dated 22/08/1990 to show that plaintiff purchased suit property. However, the plaintiff has not filed affidavit of vendor or witness to show that plaintiff paid entire consideration amount of sale deed from her own income. Furthermore, whether suit property is self acquired property of plaintiff or not cannot be decided at this stage. It requires evidence.

12. At this stage, defendants have filed certified copy of plaint & written statement of RCS No. 20/2005 Ramesh vs. Tatyrao. Said suit was filed by present defendant No.1 against present plaintiff & other family members for declaration & injunction in respect of land Gat No.126/1/kha, Gat No. 55/1/Kha,

55/2/Kha & 55/1/ Kha. At this stage, it shows that present plaintiff who is defendant No. 4 in said suit stated in written statement that property on her name is joint family property. At this stage, plaintiff has not given explanation about said admission in her plaint as well as temporary injunction application. At this stage, defendant No.1 filed copy of Spl.C.No. 79/2021 Ramesh vs. Shesherao. It shows that present defendant No.1 filed suit for partition & separate possession against present plaintiff & other family members in respect of present suit property & other property. Present plaintiff has filed written statement in Spl.C.S. No. 79/2021. It appears from written statement of present plaintiff in Spl.C.S. No. 79/2021 that present plaintiff has specifically admitted in para No. 5 of written statement Exh. 15 of Spl.C.S No. 79/2021 that land Gat No. 55 adm. 2 H. 18 R. had been purchased by joint family of plaintiff (Ramesh who is defendant No.1 in present suit) on the name of defendant No.3 (present plaintiff) through sale deed No. 2351/90. At this stage, the present plaintiff has not given any explanation about said admission.

13. It is mentioned in para No.4 of temporary injunction application that defendant no.1 & 2 obstructed plaintiff in suit land & threatened to plaintiff. So, plaintiff had filed complaint at P.S. Chakur. However, at this stage, the plaintiff has not filed any copy of complaint to show alleged obstruction of defendants in suit land.

It also shows that plaintiff is trying to suppress something before court.

14. After considering above all things & discussion, plaintiff has not filed any document to show that suit property is self acquired property of plaintiff. At this stage, previous & subsequent litigation between parties shows that suit property is joint family property of plaintiff & defendant. The plaintiff has not filed copy of complaint to show alleged obstruction by defendants. Plaintiffs & defendants are joint family members. Prima facie plaintiff has failed to prove his case. So, I answer point No. 1 in negative. In view of answer to point No.1 in negative, I answer point No.2 & 3 does not survive and in answer to point No. 4, I proceed to pass following order.

ORDER

Application [Exh.5] is rejected.

Date : 23.03.2022.

(Prashant P. Kale)
Civil Judge J. D., Chakur.