

ORDER BELOW EXH- 5

This is an application filed by the plaintiffs under Order 39, Rule 1 and 2 of the Code of Civil Procedure for grant of temporary injunction restraining the defendants from obstructing cultivation of the suit properties.

2] It is case of the plaintiffs that they are owners and in possession of the agricultural lands bearing Gut No. 89, 85 (5A), 86 and 88/1A situated at *Mauze* Talai, Tal. Dhadgaon, Dist. Nandurbar. (hereinafter referred as the suit properties). The defendants have no right over the suit properties. The defendants have filed false suit for partition of the said properties vide R.C.S. No. 35/15. On 17.11.2015, the defendants illegally entered into the suit properties and obstructed the plaintiffs. They are trying to dispossess the plaintiffs from the suit properties. Therefore, the plaintiffs constrained to file the present suit for perpetual injunction.

3] Defendants appeared and filed their written statement at Exh. 18. They denied all the contentions raised by the plaintiffs. It is defence that suit properties are ancestral properties. There was no partition of the suit properties. Parties are cultivating the said properties jointly. Hence, they prayed to dismiss the suit.

4] Perused the application, say and record of the case. Heard learned advocates for both the sides.

5] Considering above facts and circumstances, material on record and arguments of both the parties, following points arise for my determination and I recorded findings thereon with reasons stated below,

Sr. No.	Points	Findings
1	Whether there is a prima facie case in favour of the plaintiffs ?	Yes
2	Whether the balance of convenience is in favour of the plaintiffs ?	Yes
3	Whether the plaintiffs will suffer irreparable loss, if an order of temporary injunction would not be passed as prayed ?	Yes
4	What order ?	Application is allowed.

REASONS

6] Learned advocate for the plaintiffs argued that 7/12 extracts of the suit properties show that the Raya Vasave i.e. father of plaintiff no. 2 to 4 was owner and in possession of the said properties. After demise of Raya, the plaintiffs are cultivating the suit properties. There is prima facie case and balance of convenience in favour of the plaintiffs. They will suffer irreparable loss, if injunction is not granted. Hence, he prayed to allow the application.

7] Learned advocate for the defendants strongly opposed the application. He submitted that suit properties are ancestral properties of the parties. There was no partition of the suit properties.

Parties are cultivating the said properties jointly. Hence, he prayed to reject the application.

AS TO POINT NOS. 1 TO 3

8] Point nos.1 to 3 are interrelated, therefore, they are being discussed together.

9] In support of their case, the plaintiffs have filed 7/12 extracts of suit properties.

10] 7/12 extracts of suit properties show name of Raya Hatya Vasave as owner and in possession of the said properties. Raya is husband of the plaintiff no.1 and father of the plaintiff no. 2 to 4. As per death certificate Exh.3/6, Raya Vasave died on 04/07/2014. There is no document in favour of the defendants to show that they are cultivating the suit properties. There is no material to substantiate defence of the defendants. Therefore, it is clear that plaintiffs are in possession of the suit properties and cultivating the same.

11] The defendants denied rights and possession of the plaintiffs over the suit properties. Therefore, it appears that apprehension of the plaintiffs is well founded. In such circumstances, there is prima facie case in favour of the plaintiffs. The plaintiffs will suffer irreparable loss, if the defendants are not restrained. On the contrary, no prejudice will be caused to the defendants by restraining

them from obstructing the plaintiffs from cultivating the suit properties.

12] Considering above discussion, I am of the opinion that there is a prima facie case and balance of convenience in favour of the plaintiffs. They will suffer irreparable loss, if injunction is not granted. Therefore, the application deserves to be allowed. Hence, I recorded finding in affirmative to point nos. 1 to 3 and proceed to pass the following order.

ORDER

- 1) The application Exh. 5 is allowed.
- 2) The defendants or their agent or anybody claiming through them are hereby restrained from obstructing the plaintiffs from cultivation of the suit properties till further orders.

Date:– 30.11.2016

(M. B. Patil)
C.J.J.D., Dhadgaon.