

ORDER BELOW EXH. 05 IN R.C.S.NO. 25/2018**(Passed on 01/10/2018)**

Present application is filed by plaintiffs for grant of temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908.

Facts which gave rise to present application are as under :-

(02) Plaintiffs have filed suit for declaration of ownership and perpetual injunction for restraining the defendants from causing obstruction to their possession over the suit property i.e. Gut No.31/2 admeasuring 4H 4R situated at Devalipada, Tal-Navapur (hereinafter referred to as the “**Suit Property**” for the sake of brevity).

(03) It is case of plaintiffs that defendant no.1 to 3 are their real brothers and defendant no.4 is their sister. Defendant no.5 is the son of plaintiff no.1, defendant no.6 to 8 are the legal heirs of per-deceased son of plaintiff no.1. Defendant no.9 and 10 is the son and daughter of plaintiff no.2. Gut no.86 (Survey no. 83/1) was originally owned by one Nandrya Babla. He given said land to his sister and mother of plaintiff and defendant no.1 to 4 as a joint ownership. M.E. No. 24 registered to that effect. Thereafter, on 16/10/1976, Nandubai died and her half share in Gut no.86 came to be devolved upon her legal heirs i.e. plaintiffs and defendant no.1 to 4. M.E. No. 82 came to be mutated to that respect. During consolidation scheme, whole Gut no.86 was given Gut no.31. Subsequently, Gut no. 31 came to be partition and Gut no. 31/1 came to the share of Nandrya Babla and remaining portion i.e. Gut

no. 31/2 (suit property) came to the share of plaintiffs. Plaintiffs were residing with her deceased mother Nandubai. They took care of all bare necessities of her deceased mother. Defendants were outstayed due to their education and job. They never cultivated suit property. Defendant no.4, after her marriage, started residing with her husband at village Tarapur, Tal. Navapur. Since last 40 years, plaintiffs have been exclusively cultivating suit property. Gut no.86 i.e. the ancestral property of the plaintiffs and defendants came to be partition equally amongst them. M.E. No.5 came to be effected to that respect. The deceased mother of plaintiffs and defendants no.1 to 3 expressed her desire before her death that property standing her name i.e. suit property be given plaintiffs as they have no alternate source of income except farming. Therefore, defendants never claimed their claimed in the suit property. Today, plaintiff due to his old aged partitioned suit property among his legal heirs i.e. defendant no.5 to 10 and M.E. no. 81 and 140 came to be registered to that effect. Thereafter, defendants started claiming their share in the suit property. On 20/05/2011, when plaintiffs were cultivating suit property, defendant no.1 to 4 forcefully obstructed plaintiffs from cultivating suit property. Therefore, plaintiffs constrained to file this suit seeking declaration of ownership and perpetual injunction to restrain the defendants from interfering with their possession over the suit property.

(04) By way of present application, plaintiff has prayed that defendants no.1 to 4 be temporarily restrained from obstructing his possession over the suit property till final disposal of the suit.

(05) Defendant no. 1 to 4 filed their written statement cum say at Exh.20. Defendant no.5 to 10 admitted the claim of the plaintiff vide written statement below Exh.22. Defendants no.1 to 4 admitted the relationship shown by the plaintiffs. Apart from that, they denied plaintiffs' each and every contention. They have stated in their defence that after the death of their mother Nandubai Valvi, name of the plaintiffs and defendants came to be recorded in the record of rights of the Gut no.82 as her legal heirs. M.E. No. 82 came to be mutated in that respect. Being legal heirs of the Nandubai, they are having equal undivided share in the suit property. Plaintiffs and defendants are jointly cultivating the suit property as owners thereof. Plaintiffs fraudulently managed to effect M.E. No.81 and 140 by hand in gloves with the Talathi and thereby mutated suit property in the names of their legal heirs. The said mutation entries no.81 and 140 came to be cancelled in R.T.S. Appeal No.48/2013 vide order dated 14/11/2013. The said order came to be confirmed by the Appellate Revenue Authorities. Defendants also contended that though they were residing out of Navapur, they are cultivating suit property through laborers. They are providing agricultural implements and fertilizer for the purpose of cultivation. They are also paying labor charges of the laborer working in the suit property. Suit property, being the property of their mother, they are entitle to have share in the suit property by way of partition. Their mother never expressed any desire of giving suit property to the plaintiffs. The plaintiffs were never in exclusive possession of the suit property as a owners thereof. There was no cause of action for filing present suit. Defendants are also owners of the suit property. Therefore, no prima-facie case lies in favour of plaintiffs and their application for temporarily injunction deserves to be rejected.

(06) Following points arise for determination, to which I have given my findings along with reasons there below as follows.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether prima-facie case lies in favor of plaintiffs for grant of temporary injunction as prayed for?	No.
2)	Whether plaintiffs would suffer irreparable loss, if temporary injunction is refused?	No.
3)	Whether the balance of convenience lies in favor of the plaintiffs?	No.
4)	What order?	Application is dismissed as per final order.

REASON

(07) Prima-facie case, balance of convenience and irreparable injury are the three requirements for obtaining injunction. One of the three requirements, as stated above, for obtaining injunction is that the plaintiff must establish a prima-facie case in his favour. The Court must not only be satisfied that the claim is not frivolous or vexatious but there is a serious question to try. The requirement of prima-facie case need the plaintiff to establish from the findings that he has a debatable case in his favour and without the same no injunction can be granted.

AS TO POINT NOS. 1 TO 3:-

(08) All these points are interlinked and interconnected with each other, therefore taken up for consideration together for their convenient discussion.

(09) Plaintiffs have relied upon the 7/12 extracts of the suit property and M. E. No.81, 82 and 140 relating to suit property. On the other hand, defendants have also placed on record copy of order dt. 31/12/2014 passed in R.T.S. Appeal No.48/2013 whereby M.E. No. 81 and 140 came to be cancelled and 7/12 extract of the suit property.

(10) I have thoroughly gone through the pleadings of both the parties, documents produced by them and also heard learned Advocates for both the sides.

(11) It is specific case of plaintiffs that they are owners and possessors of the suit property. Their contention is that their mother expressed her desire to give suit property to them and defendants were agreed for the same. Therefore, they have been cultivating suit property since last 40 years as owners thereof. Defendants never claimed their share in the suit property. Defendants have been staying away from suit property since last 40 years. Therefore, they are not in possession of the suit property. Now, they are causing obstruction to the possession of the plaintiffs.

(12) On the other hand, it is a specific defense of the defendants that they are the real brothers of plaintiffs. Suit property was owned by their mother i.e. Nandubai and after her death their names came to be

recorded as her legal heirs in the revenue records of suit property vide mutation entry no.82. They are having undivided equal shares in the suit property. They are also cultivating suit property as owners thereof.

(13) The Learned Advocate Mr. J. B. Dusane for the plaintiffs argued that defendants are outstayed due to their education and service purpose. They never cultivated the suit property as they were residing away from suit property. Furthermore, their mother i.e. Nandubai had given suit property to the plaintiffs. Therefore, though the suit property standing in the joint name of plaintiffs and defendants, plaintiffs have been cultivating the suit property since last 40 years. Defendants are unnecessarily causing obstruction to their possession. Therefore, they are entitled to interim injunction.

(14) The Ld. Advocate Mr. A. G. Valvi for the defendants vehemently argued that plaintiffs are not sole owners of the suit property. 7/12 extract clearly shows that suit property jointly standing in the name of plaintiffs and defendants. They were jointly cultivating the suit property. Being the owners of suit property, they are having right to cultivate the same. Hence, they cannot be prevented from cultivating the suit property.

(15) Ongoing through pleadings, argument of both the sides and also the documents on record, it is seen that 7/12 extract of the suit property standing in the joint name of plaintiffs and defendants. Moreover, M.E. No.82 clearly shows that after the death of Nandubai suit property came to be registered in the name of her legal heirs i.e. plaintiffs and defendants. There is no document on record for showing that Nandubai had given suit property to the plaintiffs to the exclusion

of defendants. Therefore, defendants, being the legal heirs of Nandubai are having undivided share in the suit property.

(16) It is pertinent to note that, being the legal heirs of Nandubai, defendants are co-owners of the suit property along with the plaintiffs and they are entitled to enjoy suit property equal to that of plaintiffs. There is no document on record showing exclusive ownership of the plaintiffs over the suit property. Therefore, interim injunction cannot be granted against the co-owners i.e. defendants. My view is fortified by the authority of *Man Chandak Developers Pvt. Ltd. Vs. Dilip Mangilal Jain, 2014(1) ALL MR 497*, wherein, Hon'ble parent High Court observed that, "Every co-owner has a right to possession and enjoyment of each and every part of the property equal to that of other co-owners. Therefore, in theory, every co-owner has an interest in every infinitesimal portion of the subject matter, each has a right irrespective of the quantity of its interest, to be in possession of every part and parcel of the property jointly with others. A co-owner of a property owns every part of the composite property along with others and he cannot be held to be a fractional owner of the property unless partition takes place".

(17) It is also one of the contentions of the plaintiffs that defendants were outstayed due to their education and service. Therefore, they are not in possession of suit property. Defendants contended that they are cultivating suit property through labourer. According to me, merely because, any person residing away from his property, it does not mean that he is not in possession of the property. In such situation, such person is having de-jure possession over the property, which is not de-facto. Therefore, though, defendants are

staying away from the suit property, it does not mean that they are not in possession of the suit property. They are having de-jure possession over the suit property i.e. possession in the eyes of law. They can cultivate suit property through another. Therefore, in the eyes of law, defendants are also in possession of the suit property.

(18) In view of the aforesaid discussion, I am of the opinion that prima facie, plaintiffs failed to prove that they are in exclusive possession of the suit property as owners thereof. Therefore, I am not inclined to grant relief of temporary injunction in favor of the plaintiffs.

(19) In view of the aforesaid discussion, I do not find prima facie case in favor of plaintiffs to grant the temporary injunction as sought by them as there is no dependable evidence on record to show their exclusive possession over the suit property. Balance of convenience does not lie in favour of plaintiffs. Therefore, I am not inclined to accept the prayer of plaintiffs for temporary injunction as sought by them. Accordingly, I answer point no.1 to 3 cumulatively negative and pass the following order to answer point no.4.

ORDER

- (1) Application below Exh. 5 is rejected.
- (2) Costs on cause.

Navapur.
Date: 01/10/2018.

Sd/-
(Nilesh R. Yalmane)
Civil Judge J.D., Navapur,
Dist. Nandurbar.

CERTIFICATE

“ I affirm that the contents of this PDF file order are same word for word as per original order.”

Name of Stenographer	:	R. R. Nikam,
Court Name	:	Shri. N. R. Yalmane, C.J.J.D. & J.M.F.C. Navapur
Date	:	01/10/2018
Order signed by presiding officer on	:	01/10/ 2018
Order uploaded on	:	01/10/ 2018