

ORDER BELOW EXH.5 IN R.C.S. No. 36/2014

This is an application filed by the plaintiff under Order 39 Rule 1 and 2 of Civil Procedure Code for temporary injunction against the defendants to restrain them from making encroachment by constructing houses over suit property i.e. survey no. 1/3/A, admeasuring area 1 Hc. 32 R which bounded as follows :-

Towards East :- A Road
Towards West :- Land of Manoj Ranulal Jain
Towards North :- Land of Bebibai Ukha Marathe
Towards South :- Boundary of village Jambli
(Herein after called as 'Suit Property ').

2. Perused application and say of defendants no. 2 to 4(Exh.26). Heard argument of Ld. Counsels Adv. Shri. D.L. Patil for Plaintiff and Adv. Shri. S.V. Wani for the defendants no. 2 to 4. I have gone through the contents of plaint, application-Exh.5, and Written Statement of defendants no. 2 to 4. I have also gone through the documents filed by the both parties. I have also gone through the record of R.C.S. No. 5/2014 filed by defendant nos.4 against present plaintiff and Nuna Babu Valvi.

3. The plaintiff has contended that, he purchased suit property admeasuring area 1 Hr. 32 R from Nuna Babu Valvi. This fact is not denied by defendants. However, they have challenging the legality of said sale deed by filing R.C.S. No. 5/2014 in this court. The name of plaintiff is appearing in ownership as well as possession column of 7/12 extract of suit property.

4. On the other hand, the defendant no. 2 to 4 contended that, Nuna Babu Valvi had executed agreement in respect of some pieces of land from suit property. They further contended that, they are residing over said properties by constructing their houses. The defendant no. 4 has filed R.C.S. No. 5/2014 against plaintiff and Nuna Babu. Said suit was filed on 21-02-2014. The said suit is filed for specific performance of contract between Nuna Babu Valvi and Jaysing

Poslya Valvi. In that suit, the plaintiff Prabhavati Kalsha Vasave and Nuna Babu Valvi have appeared on 12-3-2014. The plaintiff Prabhavavi Kalsha Vasave has filed present suit on 2-12-2014 i.e. After filing their written statement in R.C.S. No. 5/2014. The defendants no. 2 to 4 have also contended that, they are residing in their houses which are over suit property. Admittedly, they have not filed any document to show that, there are houses over suit property. However, they have moved an application Exh.41 for appointment of court commissioner to inspect the position of suit property. The application-Exh.41 came to be allowed by this court. It was directed to T.I.L.R. Akkalkuwa to inspect in respect of possession and houses over suit property and submit his report within a month. The said order is dated 16-10-2015. The defendants paid required fee for court commissioner on 18-10-2015. However, it doesn't appear from the record of writ of court commissioner was issued to T.I.L.R. Akkalkuwa.

5. As both the parties are contending that they are in possession, it is necessary to see that, who is in actual physical possession of suit property. So in my opinion, report of T.I.L.R. Akkalkuwa will be helpful to decided issue in question. Hence, before passing any final order below Exh.5, it is necessary to issue a letter to T.I.L.R. Akkalkuwa for inspection of suit property and call his report. Hence, I pass following order :-

ORDER

- 1) The T.I.L.R. Akkalkuwa is hereby directed to inspect the position of suit property in respect of possession and houses over suit property and submit his report on or before 29-12-2015.
- 2) Senior clerk Shri. R.K. More is hereby directed to issue letter to T.I.L.R. Akkalkuwa immediately.
- 3) Both the parties are directed to maintain status-quo till the report of T.I.L.R. Akkalkuwa

Akkalkuwa
Dated : 08/12/2015

(Y.S. Paithankar)
Civil Judge, J.D., Akkalkuwa, Dist.Nandurbar