

**ORDER ON APPLICATION EX.06**

1- The plaintiff has filed suit for demarcation and fixation of boundaries of the 95 R portion of field block no.751 situated at Lohagaon, Tq.Biloli, Dist.Nanded purchased from Sudhakar Shesherao More and Rajeshwar Ganesh Choudhary. The portion of block no.751 is the subject matter of present suit and is hereinafter referred as suit field for the sake brevity and convenience. The plaintiff is also seeking mandatory injunction against defendant no.7 and 8. He is also seeking perpetual injunction against defendant no.1 for restraining him from carrying out excavation of minerals from field block no.751. In the said suit he has filed present application under Order 39 Rule 1 and 2 of C.P.C. for grant of temporary injunction against defendant no.1.

2- According to plaintiff he is the legal owner in possession of suit field. Further that he and defendant no.1 to 6 are the joint owners in field block no.751. Further that the suit field lies adjacent to the field of defendant no.1. According to him the defendant no.1 has a business of stone crusher. The defendant no.1 is illegally carrying out excavation work on the entire field block no.751. According to him the Gram Panchayat office of Lohagaon has illegally granted permission to him for excavating the entire field block no.751 when he and defendant no.2 to 6 are also joint owners in the said block number. According to him if the defendant no.1 continuous with the excavation work it will cause damage and loss to the fertility of suit field. Further that he has filed complaint with defendant no.7 and 8 against defendant no.1. But no action has been taken against defendant no.1. He

requested defendant no.1 to stop the excavation work. But the defendant no.1 paid no heed. Hence he has filed present suit and application for restraining him from carrying out excavation in the suit field and from disturbing his peaceful possession over suit field till final disposal of suit.

3- The defendant no.1 to 8 were served with suit summons. But only defendant no.1 appeared in present suit through his counsel to file his written statement/say to present application (Exh.29). As defendant no.2 to 8 did not appear in present suit order was passed against them below Exh.1 on 29/06/2015 that suit to proceed ex-parte against them. After passing of the said order defendant no.2 to 8 made no attempts to get the said order set-aside and seek permission for filing reply to present application. Hence, there is reply of defendant no.1 only filed on record.

4- The defendant no.1 in his written statement has admitted that he is the owner of 95 R portion of field block no.751 of Lohagaon, Tq.Biloli, Dist.Nanded. He also admitted that he has a business of stone crusher done under the name and style 'Tirupati Stone Crusher, Lohagaon'. He admitted that the Sub Divisional officer, Degloor has passed a resolution in his favour of carrying out excavation of minerals from field block no.751. He also admitted that he is excavating stones for his crusher from his area only. He has denied the other averments made by plaintiff against him.

5- According to defendant no.1 the plaintiff has filed present suit through his power of attorney Vithal Rauthkhedkar with a malafide intention. According to him he has all the necessary permissions to run his stone crusher business. Further that he is excavating stones from the portion of field block no.751 purchased by him. According to him plaintiff is not in

possession of the suit field. Further that there is no prima-facie case made out for plaintiff. Also that balance of convenience does not lie in his favour. Hence he is praying that instant application be rejected with cost.

6- On the basis of rival contentions of both the sides, following points arise for determination. I have recorded my findings to each of them for the reasons that follow:

<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1 Whether plaintiff has made out a <i>prima facie</i> case ?	In the affirmative.
2 Whether balance of convenience lies in plaintiff's favour?	In the affirmative.
3 Does plaintiff prove that he will suffer an irreparable loss, in case injunction is refused?	In the affirmative.
4 What order?	Application is allowed.

### **Reasons**

7- It is an admitted position that field block no.751 is situated at Lohagaon, Tq.Biloli, Dist.Nanded which falls within the territorial jurisdiction of this court. Further that the defendant no.1 has purchased 95 R portion of field block no.751 from Shankar Ganesh vide registered sale deed dated 06/01/2005. Further that the defendant no.1 is doing business under the name and style 'Tirupati Stone Crusher, Lohagaon' and has installed a stone crusher on field block no.750 situated at Lohagaon. It is also an admitted position that the defendant no.1 is excavating stones from a portion of field block no.751 for his stone crusher.

**As to point no.1 :**

8- To prove his ownership and possession over suit field the plaintiff has filed on record certified copy of sale deed bearing no.2900/2004 dated 12/07/2004, certified copy of 7/12 extract pertaining to field block no.751 and certified copy of 8-A extract issued under the Maharashtra Land Revenue Code. The second and third document as referred above are public documents. Hence they are safe to rely upon. The copy of sale deed filed on record by plaintiff is a certified copy of a registered sale deed. Hence, prima-facie the same can be relied upon by plaintiff to prove his ownership over suit field.

9- The contention of plaintiff that he and defendant no.1 to 6 are the joint owners of field block no.751 of village Lohagaon, Tq.Biloli, Dist.Nanded is supported with the certified copy of 7/12 extract pertaining to said field filed along with Exh.5. The contention of plaintiff that suit field is adjacent to the field of defendant no.1 is supported by the boundaries of suit field mentioned in the sale deed of plaintiff and the boundaries of field of defendant no.1 as mentioned in para 16 of the written statement. It is also clear from the copy of sale deed of suit field filed by plaintiff that the sale deed of plaintiff is earlier in point of time than the sale deed of defendant no.1.

10- The defendant no.1 has filed on record resolution bearing no.7 passed by the Gram Panchayat Lohagaon on 28/12/2013. As per the said resolution permission has been granted to the defendant no.1 for excavating stones from field block no.751. It is an admitted position that defendant no.1 is a business of stone crusher and that he is excavating stones from a portion of field block no.751.

11- The plaintiff has filed on record photographs of field block no.751 to support his contention that the defendant no.1 is excavating stones from the entire field block no.751. He strongly apprehends that the defendant no.1 will also excavate the suit field. And if he does so it will cause loss and damage to the suit field and will badly effect the fertility of suit field. This apprehension of plaintiff is justified in view of the resolution no.7 dated 28/12/2013 passed by the Gram Panchayat, Lohgaon whereby permission has been given to defendant no.1 excavate entire field block no.751. The defendant no.1 in para 18 of his written statement has denied the possession of plaintiff on suit field which suggests hostility of defendant no.1 towards plaintiff.

12- It is not the case of defendant that he is the owner of suit field. Also it is not the case of defendant no.1 that he is in possession of suit field. There is nothing place on record to show that all the joint owners of field block no.751 i.e. plaintiff and defendant no.2 to 6 had given consent to defendant no.1 for excavating the entire field block no.751 and accordingly the Gram Panchayat, Lohagaon passed resolution no.7 dated 28/12/2013. As there are 7 joint owners in field block no.751, the Gram panchayat, Lohgaon did not have any right to grant permission to defendant no.1 to excavate the entire field block no.751 without taking consent / no objection from the remaining joint owners of the said field. Hence, prima-facie the said resolution passed by Gram Panchayat Lohagaon does not appear to be legal.

13- The plaintiff has documents to show ownership and possession over suit field. The defendant no.1 does not have any document to show that he has any right to excavate the suit field. Also the defendant no.1 does not have any document to show that he has any right, title or interest in the suit

field. The 7/12 extract pertaining to suit field field by plaintiff shows that the suit field has been under cultivation. If the defendant no.1 is not restrain from carrying excavation on suit field it is bound to effect the fertility of suit field and also it will damage and cause loss to the suit field thereby deprecating its value.

14- The contention of counsel for defendant no.1 is that the plaintiff has not filed affidavits of adjacent field owners to prove the possession of plaintiff over suit field. Further according to him the plaintiff has not filed the affidavit of the photographer who took photographs of suit field to support of the contention of plaintiff that the photographs pertain to the suit field. Further that the plaintiff has not got the suit field demarcated to ascertain its boundaries. Hence, according to him the contention of plaintiff cannot be believed. But on perusal of record it is apparent that the plaintiff has filed certified copy of sale deed, certified copy of 7/12 extract and certified copy of 8-A extract to prove his ownership and possession over sit field. The sale deed is a registered document and two documents are public documents. Admittedly plaintiff has not filed on record the affidavit of the photographer who clicked the photographs filed on record. But when defendant no.1 has admitted in his written statement that he is carrying out excavation on field block no.751, the affidavit of photographer was not required. As far as the question of demarcation of suit field is concerned, the plaintiff has not measured the suit field to demarcate its boundaries. However defendant no.1 is aware about the portion of field block no.751 purchased by him by virtue of sale deed dated 06/01/2005. Defendant no.1 may have ascertaind the boundaries of the portion purchased by him before execution of sale deed dated 06/01/2005. Hence, even if the boundaries of

suit field are not demarcated , the defendant no.1 is well aware as to the portion of field block no.751 purchased by him. The defendant no.1 cannot excavate the field block no.751 beyond the portion purchased by him.

15- In view of the prima-facie evidence and the reasons discussed in para 7 to para 14, I am of the opinion that the plaintiff has a good prima-facie case. I, therefore, answer my finding to point no.1 in affirmative.

**As to point no.2 & 3 :**

16. As per the copy of sale deed of suit field, the certified copy of 7/12 extract of suit field and the 8-A extract pertaining to suit field it is apparent that the plaintiff is the owner and in possession of suit field. The defendant no.1 has nothing to show that he has any right, title or interest in the suit field. The defendant no.1 is neither claiming any ownership or possession over suit field. The Gram Panchayat Lohagaon has passed resolution giving blanket authority to defendant no.1 to excavate the entire field block no.751. If the defendant excavates the suit field which does not belong to him, but belongs to plaintiff, it is bound to cause inconvenience to plaintiff. On the other hand no inconvenience will be caused to defendant no.1 if he is restrained from carrying out excavation on field block no.751 because the entire block no.751 does not belong to him, but there are six other joint owners of it.

17- As far as the question of irreparable loss to plaintiff is concerned, if the injunction is refused it will result into multiplicity of litigation. If this happens the plaintiff will have to go on litigating which will disturb his mental peace and will subject him to loss of time and money.

Also his land will be rendered, useless if excavated by defendant no.1 and so the plaintiff will not be able to enjoy the fruits from suit land. The disturbance to mental peace, loss of time, insecurity and deprivation from enjoyment of fruits from the land of plaintiff are things which cannot be quantified in terms of money and compensated in terms of money. Hence, I feel that the plaintiff will be subjected to irreparable loss if injunction is refused.

18- In view of the reasons discussed in para 16 & 17 I answer my finding to point no.2 and 3 in affirmative.

**As to Point No.4:**

19- In view of my findings to points No. 1 to 3 I pass the following order.

**ORDER**

- 1- Instant application for grant of temporary injunction against defendants No. 1 is allowed.
- 2- The defendant No 1, his agents, relatives, friends, servants or any other persons acting on his behalf are hereby temporarily restrained from carrying out excavation work in any form on field block no.751, Lohagaon, Tq.Biloli, Dist.Nanded till final disposal of suit.
- 3- Cost in cause.

Sd/-

Date: 09-10-2015

( R. B. Bhagwat)  
Civil Judge S.D., Biloli.

**CERTIFICATE**

I affirm that the contents of this P.D.F. judgment/ order are same word to word, as per the original order.

Name of the Stenographer : S.B.Panchal

Court Name: Civil Judge Senior Division, Biloli.

Date: 09-10-2015

Judgment/Order signed by the Presiding Officer on 09-10-2015

Judgment/Order uploaded on : 09-10-2015



