

ORDER BELOW EXH.5.  
(Pass on this 1<sup>st</sup> day of September, 2015)

This is an application for temporary injunction vide Order 39 Rule 1 and 2 of the Code of Civil Procedure. Defendant Nos.2 and 3 filed their say below Exh.19.

2] Read the application and the say.

3] Heard the learned advocate Shri. Dharaskar for the applicant and Shri. Raut for the non-applicants.

4] Gone through the various documents filed by the applicant below list Exh.4, 27 and 34. Also gone through the documents filed by the non-applicants filed below list Exh.29.

5] The Points for my determination alongwith my findings thereon are as under :-

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether prima facie case lies in favour of the plaintiff ?	No.
2. Whether balance of convenience lies in favour of the plaintiff ?	No.
3. Will plaintiff suffer irreparable loss, if injunction is refused ?	No.
4. What order ?	Application is rejected.

R E A S O N S

As to Points No.1 to 3 :

6] As per application, it is the say of the applicant that he has

purchased the land in Survey No.384/4 [old], 382/2 [new] admeasuring 0.93 H.R., P.H. No.73, mouza No.306, R.M.A. Mouda, situated at Mouda with four boundaries as under :

East : Field property of Balchand Dhanjode in occupation of non-applicants  
West : Field property of Namdeo Widibhasme.  
North : Road.  
South : Field property of Namdeo Widibhasme.

7] It is his say that one Shrawan Dhanjode was owner of property in Survey No.318/6 admeasuring 3.16 H.R. He sold the said property to plaintiff No.2 to 4. Accordingly, Survey No.318/6 was renumbered as 382/2. Out of 1.69 H.R. plaintiff has purchased 0.93 H.R. from plaintiff Nos.2 to 4. Accordingly, it is renumbered as 384/4. Its separate 7/12 extract was prepared by Revenue Department. He was put in possession on the date of sale-deed on 06.08.2010. Since then he is in cultivating physical possession. In 2010 in the resettlement Survey No.384/4 was merged in 382/2 which was earlier having Survey No.318/6 and 318/7. He has applied for mutation but as the remeasurement proceedings was going on the same could not be mutated. After completion of remeasurement process there was change of numbers of the fields of the applicant and non-applicants. Plaintiff Nos.2 to 4 have applied for correction against defendant No.1 to 3 before Tahsildar. Said application was allowed on 31.07.2010. It was ordered that original number of Survey Number 384/4 be continued as it is. It is also held that it was a mistake on the part of concerned Department. Said order has been challenged before S.D.O. by father of defendant No.2 and 3 and husband of defendant No.1. Order of Tahsildar was set aside. It has been ordered by S.D.O. that affected party may apply to City Survey for correction of mistake. Said order has been challenged by plaintiff

No.2 to 4 before Collector, Nagpur which is still pending.

8] Non-applicants have come with a case that there is no dispute that Shrawan Dhanjode was owner and possessor of Survey No.318/6 [382/2]. They have disputed the fact that there is no survey number 384/4. They have come with a case that plaintiff No.2 to 4 were not the owner and in possession of Survey No.384/4 at the time of sale-deed in favour of the applicant. They have no right, title or interest to sell the same. Survey No.318/6 has been changed in Survey No.382/2. The area in both is same. Any mistake in numbering of resurvey has to be placed before Superintendent of Land Records. Survey No.384/4 is not the part of consolidation of Survey No.318/2 or resurvey No.384/1. There is no mention of Survey No.384/4 in Patwari Map. Accordingly, when Survey No.384/4 is not available on records there is no question of sale-deed of the same. There is no existence of Survey No.384/4.

9] Accordingly, I perused the documents below Exh.4, 27 and 34 filed by the applicant and below list Exh.29 filed by the non-applicants. With sale-deed of the applicant there is a 7/12 extract of Survey No.384/4 of the year 2008-09, 2009-10 and 2010-11. Document No.2 is also a 7/12 extract of Survey No.384/4 of the year 2011-12. The 7/12 extracts alongwith sale-deed is prepared vide Mutation Entry No.9551 dt. 04.08.2010 and 7/12 extract of the year 2011-12 is appeared to be prepared vide Mutation Entry No.9565 and 10524 dt. 28.02.2013. But no such mutation entries have been filed by the applicant on record. Hence, this Court is unable to come to conclusion as to how the 7/12 extracts as mentioned above have been prepared.

10] On perusal of Ferfar Entry No.91 filed by the non-applicants, it appears that there were 3 parts Survey No.318. Survey No.318/1 and 318/6 were

in the share of Shrawan Dhanjode the original owner. Said land in Survey No.318/6 admeasuring 1.16 H.R. is mutated vide mutation entry No.179 in the name of plaintiff Nos.2 to 4. This document is filed below list Exh.29 by the non-applicants. The 7/12 extract in favour of the applicant having survey No.384/4 has been cancelled by the order of learned S.D.O. dt. 07.02.2013. The appeal in that respect is pending before the Collector, Nagpur. As per order of learned S.D.O dt. 07.02.2013, the learned S.D.O. has come to conclusion that there is every possibility of changes in the exact area of the lands and the same has to be decided by the Superintendent of Land Records. Hence, prima facie the plaintiff/applicant has failed to prove the existence of survey No.384/4 by filing the relevant documents on record. Even on perusal of the photos filed below list Exh.27 by the applicant it appears that there is no mention on the standing Board that the land in dispute is the land as shown in the photos is one and the same. There is even no mention of survey No.384/4 on the Boards as seen in the photo No.1 and 2 filed by the applicant. Further on perusal of the map filed below list Exh.4 and Exh.29 there is no mention of survey No.384/4. So as noted supra the existence of survey No.384/4 is in dispute and that dispute is pending before the Collector who is Competent Authority to decide it. So in such situation, there is no prima facie case or balance of convenience lies in the favour of the applicant. Accordingly, there will no question of causing of irreparable loss to him if the application is rejected.

11] In view of the said facts, the ratio of Hon'ble Bombay High Court as submitted by the learned advocate for the applicant in Baban Vs. Pramila reported in 2011[6] All.M.R. 15 will not be applicable. Hence, I answer point Nos.1 to 3 in the negative.

**As to Point No.4 :**

12] In view of my negative findings of Point No.1 to 3 the plaintiff will not suffer irreparable loss if the application is rejected. Hence in answer to point No.4, I pass the following order :-

**O R D E R**

- 1] The application is rejected.
- 2] Costs in cause.

Date: 01.09.2015.

(Tejwant Singh A.Sandhu)  
Civil Judge Jr. Dn., Mouda