

**ORDER BELOW EXH.5**

(Passed on 2<sup>nd</sup> July, 2014)

1. The plaintiffs have filed present application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure restraining defendants from interfering with possession of plaintiffs and taking forcible possession of suit field Sr. No. 210/9 area 3.64 HR, Sr. No. 208/1 area 0.40 HR ( New Sr. No.290 area 124 HR, 291 area 1.10 HR, Sr. No. 292 area 1.36 HR and Sr. No. 307 area 0.30 HR total 4.00 HR) situated at Mouza Tishti, Tah. Kalmeshwar.

**2. The plaintiff's case is summarized as under :**

Plaintiffs and defendants are kin relatives interse. Late Ramji Thakre had owned agricultural property and after his death his legal heirs filed Special Civil Suit No. 143/1978 and compromise decree came to be passed on 25/6/1979. As a result, suit property came to the share of daughters i.e. Chandrabhagabai Wakode and Kamalabai Kuhite and their names were mutated in revenue record accordingly. Late Dadarao, husband of defendant no.1 and father of defendant no. 2 & 3 claimed relinquishment deed dt. 13/4/1980 executed by both Chandrabhagabai Wakode and Kamalabai Kuhite in his favour and accordingly he applied for mutation on 7/11/1984. Alleged deed is never executed by them and if executed, same is forged and fabricated. Said Dadarao died on 23/10/1986 and his legal heirs ie. Defendant no. 1 to 3 applied for mutation, however revenue Inspector taken mutation entry no.64 in the name of Chandrabhagabai Wakode and Kamalabai Kuhite on 29/10/1987after conducting detail inquiry.

3. After long span again defendant no. 1 to 3 applied for mutation and on

22/3/1993 the mutation was made in the name of defendants on the basis of relinquishment deed. Said order was set aside by SDO Saoner, later on Additional Collector set aside the order of SDO. In the mean while Chandrabhagabai Wakode and Kamalabai Kuhite died on 1/9/1999 and 18/2/1998. During life time Chandrabhagabai Wakode executed sale deed dt. 12/11/1998 in respect of her half share in suit property in favour of plaintiff no. 2. The Additional Commissioner set aside the order of Addl. Collector and remanded back the matter to SDO Saoner and SDO remanded matter to Tahsildar, Kalmeshwar. During all the period the suit property was in possession of Chandrabhagabai Wakode and Kamalabai Kuhite. Late Dadarao and defendant no. 1 to 3 never placed in possession nor made cultivation. Since sale deed, plaintiff no. 2 became joint possessor alongwith plaintiffs.

4. The Tahsildar Kalmeshwar by his order dt. 20/3/2013 maintained the Ferfar on the basis of sale deed executed by Chandrabhagabai Wakode but maintained earlier order of Tahsildar dt. 22/3/1993. Therefore, plaintiffs challenged the order before SDO Saoner and same is pending. On the basis of illegal order of Tahsildar defendant no. 1 to 3 come to suit property on 2/4/2013 and tried to take forcible possession. Therefore, they have filed present suit for declaration of ownership and permanent injunction.

5. As per plaintiffs, they have made out prima facie case, balance of convenience lies in their favour and they will suffer irreparable loss if injunction is not granted.

6. The defendant no. 1 to 3 filed their reply Exh. 15 and submitted that suit is barred by law of limitation as well bad for non-joinder of necessary party. Plaintiffs come before court by suppressing material fact that their suit of declaration and

injunction in respect of Sr. No. 292 is already dismissed by this court on 20/7/2012. Therefore, plaintiffs have no right to seek any relief in respect of Sr. No. 292. Chandrabhagabai Wakode and Kamalabai Kuhite were residing at their matrimonial house i.e. Malegaon and Tekadi. Therefore their Nephew Dadarao Thakre was cultivating the suit field in his life time. Even after compromise decree Dadarao was cultivating suit property. Chandrabhagabai Wakode and Kamalabai Kuhite out of love and affection relinquished their right over suit property in favour of their real nephew Dadarao Thakre in the year 1980 and Dadarao remained in possession continuously. After death of Dadarao, Defendant no. 1 to 3 continue the possession of suit property. Defendant no. 4 to 8 reside far away from suit property, they never possessed the suit property. In the year 1993, Tahsildar mutated the name of defendant no. 1 to 3 as a legal heirs of Dadarao and same order was challenged before SDO by both sisters Chandrabhagabai Wakode and Kamalabai Kuhite. Finally, said matter come before Commissioner and it was remanded back to SDO and thereafter to Tahsildar Kalmeshwar. Tahsildar come to conclusion that nobody had challenged relinquishment deed within limitation, therefore it becomes final. The order of Tahsildar again challenged before SDO, but he refused to grant any stay order. Therefore again on 20/4/2013 mutation entry no 594 is taken in the name of defendant no. 1 to 3. The sale deed executed by Kamalabai in favour of plaintiff no.2 is totally false and fabricated. No title can be conferred on the basis of said sale deed. Though the name of plaintiff no.2 is mutated on the basis of sale deed but he is not owner and possessor unless and until he declared owner by competent court.

7. One Madhukar Dongare wrongfully taken possession of Sr. No. 292 taking advantage of defendant no. 1 to 3's absence. Plaintiffs and defendant no. 4 to 8 are

trying to oust defendant no. 1 to 3's possession of suit field. They are regularly taking crops. As such they prayed for rejection of present application.

8. Defendant no. 4 filed WS Exh.22 and strongly objected the so called relinquishment deed and supported the claim of plaintiff. Moreover, defendant no. 5 to 8 adopted the WS of defendant no. 4.

9. The points for determination along with my findings thereon are as under :-

<b><u>Points</u></b>	<b><u>Findings</u></b>
1 Whether the plaintiffs have made out prima facie case ?	..... <b><u>No.</u></b>
2 Whether the plaintiffs prove that balance of convenience lies in their favour ?	..... <b><u>No.</u></b>
3 Whether the plaintiffs will suffer irreparable loss, if temporary injunction is not granted ?	..... <b><u>No.</u></b>
4 What order ?	..... <b>Application is rejected.</b>

### **REASONS**

#### **As to points No.1 to 3 :**

10. I have gone through application, say and documents filed by both parties. Heard both Learned Advocates. So also I have gone through the written notes of argument submitted on behalf of plaintiffs.

11. It is not in dispute that suit land was allotted to Chandrabhagabai Wakode and Kamalabai Kuhite as per compromise decree dt. 25/6/1979. Admittedly, plaintiffs and defendants are kin relatives interse as mentioned in family tree. The revenue proceeding before Tahsildar, SDO, Additional Collector and Additional Commissioner are not disputed.

12. At the out set, it is to be noted that the party who claims relief of equity like temporary injunction must come with clean hand without suppressing material fact. In case at hand, plaintiffs kept mum in whole plaint in respect of RCS No. 27/2009 and Judgment of the same. After demonstrating the same fact by defendant no. 1 to 3 in their WS, the plaintiffs filed pursis Exh. 38 & 39 contending that he is not claiming temporary injunction in respecting of Sr. No. 292 as well Judgment of RCS No. 27/2009 is challenged by them before Hon'ble District Court which bears RCA No. 902/2012. It was not expected from plaintiffs to suppress said fact in plaint as Sr. No. 292 is a part of present suit and plaintiffs were party to the previous suit in respect of Sr. No. 292.

13. Both parties have filed 7/12 extract and other revenue documents showing their possession over suit property. On perusal of order of revenue authority, it reveals that in 1984 the name of deceased Dadarao came to be recorded in revenue record on the basis of relinquishment deed. It further reflects that said relinquishment deed came to be executed on 13/4/1980. Admittedly, the suit field was allotted to Chandrabhagabai Wakode and Kamalabai Kuhite who are sisters of Dadarao's father. Said fact is also reveled from mutation entry. So far as possession of suit property is concerned, Dadarao appears in possession of suit property till 1987. Chandrabhagabai Wakode and Kamalabai Kuhite failed to challenge said relinquishment deed till 1987. Then after the death of Dadarao inspite mutation of defendant no. 1 to 3, the mutation is effected in the name of both sisters and said mutation entry is set aside by the Tahsildar and further said order remained fluctuating till Commissioner and finally again in the year 2013, the Tahsildar Kalmeshwar directed mutation in the name of defendant no. 1 to 3. Moreover, he confirmed the mutation in the name of plaintiff

no.2 which was effected on the basis of register sale deed.

14. It is to be noted that both parties have filed 7/12 extracts and affidavit of adjacent owner. Both parties have trying to claim their possession over suit property. It is to be noted that initially defendants Dadarao and defendants no. 1 to 3 come into picture on the basis of relinquishment deed. And sale deed relied by plaintiff no. 2 came to be executed on 12/11/1998 which was executed by Chandrabhagabai to the extent of her  $\frac{1}{2}$  share in favour of plaintiff no. 2. So far as the possession is concerned, till 1998 defendants appeared in possession, thereafter the name of plaintiff no. 2 came to be mutated after execution of sale deed dated 12/11/1998. Now recent position is that mutation is in the name of plaintiff no. 2 and defendant no. 1 to 3. So far as plaintiff no. 1,3,4 & 5 are concerned, their names are not subject of mutation at this juncture.

15. It is contention of plaintiffs that defendants failed to produce relinquishment deed. Per contra, they filed registered sale deed on record. It is to be noted that at this stage, it is necessary to see that the name of only plaintiff no. 2 is mentioned on 7/12 extract alongwith defendant no. 1 to 3. At this stage, the plaintiff no. 2 appears co-owner alongwith defendant no. 1 to 3. So far as ownership of suit property is concerned, it will be decide on merit. Moreover, though the sale deed relied by plaintiffs is registered, but it is still not clear as to whether Chandrabhagabai had better title to execute the same as Dadarao come into picture on the basis of relinquishment deed which was executed long back to sale deed. Party who claims equity must stands on its own footing. Therefore, mere none production of relinquishment deed by defendants is not going to weaken the case of defendants at this interim stage. Moreover, the question of limitation involves mix question of law

and fact, therefore it will be decide on merit. At this juncture, only plaintiff no. 2 appears co-owner alongwith defendant no. 1 to 3 as a result of order of Tahsildar of year 2013. Though the Collector granted status quo, but recent revenue record shows that only names of plaintiff no. 2 and defendant no. 1 to 3 are standing in 7/12 extract of suit property. Plaintiff no.2 being co-owner and his title involving question of merit, at this stage, plaintiff no.2 is not entitled for injunction against defendants. So far as other plaintiffs are concerned, their sources of title is not clear as the relinquishment deed relied by defendants is prior one. In such circumstances, I have no hesitation to hold that the plaintiffs failed to prove prima facie case. Moreover, balance of convenience not lies in their favour. Therefore, plaintiffs are not going to suffer irreparable loss if injunction is not granted. Consequently, I have recorded my finding to point no. 1 to 3 in negative. Therefore, the present application is liable to be rejected. Hence, I pass following order in answer to point no.4 :-

**ORDER**

- i) The application (**Exh.5**) is rejected.
- ii) Cost in cause.

**Place :- Kalmeshwar**  
Date :- 02.07.2014.

Sd/-  
**(V.G.Karmore)**  
Civil Judge Junior Division,  
Kalmeshwar