

ORDER BELOW EXH.5 IN R.C.S.NO. 06/2015

The plaintiff has filed the suit for declaration and permanent injunction against defendant No.1. She has prayed for grant of temporary injunction, on the ground that the field property situated at Mauje Goldari, Tal. Dindori, Dist. Nashik bearing Gat No. 47, admeasuring 3H 38R is the subject matter of the suit and this application.

2] The suit property is owned and possessed by one Smt. Gondyabai @ Gondi, wife of Mahadu Pawar. She died on 21/10/2014. On 28/06/2012, she executed a will in favour of the plaintiff, which was registered. She bequeathed the property to the plaintiff, because she has good relation with the mother of the plaintiff Yashodabai and they acted as sisters. Till the death of Gondyabai, the plaintiff and her husband look after her and her husband Mahadu Hari Pawar. Defendant No.1 has no relation with the testator Gondyabai. Gondyabai never resided with defendant No.1. Defendant No.1, by practising fraud on Gondyabai, got executed will in her favour on 10/03/2003, prior to the will dated 28/06/2012, deceased Gondyabai had already executed one will dated 25/01/2000, which is registered, by which she bequeathed house property, bank shares, saving certificates, ornaments and shares of society in favour of the plaintiff. As per will dated 28/06/2012, she has become owner of the suit property and she is cultivating the said field exclusively after death of Gondyabai. But, on 30/12/2014, defendant No.1 entered into the suit field and tried to disturb the possession of the plaintiff. She threatened her that as per will dated 10/03/2003, she is the owner of the suit field. She will spoil all crops. Further, she

demanded half of the suit property otherwise she will not allow the plaintiff to cultivate the suit property. In this way, she is trying to disturb the possession of the plaintiff and will dispossess her. She has prima facie case, balance of convenience is in her favour and irreparable loss would be caused to her, if injunction is not granted against defendant No.1.

3] Defendant No.1 filed her detail written statement-cum-reply along with counter claim at Exh.09. She denied allegations of the plaintiff. She admitted the description of the suit property and the ownership of Gondyabai in respect of the suit property. She further submitted that the suit property came to the share of Gondyabai from her parents. Defendant No.1 was resident of Payarpada Godari. Deceased Gondyabai died issue-less. Deceased Gondyabai has relation with her father-in-law like brother. Her father-in-law was taking care of Gondyabai on each and every occasion. Her father-in-law Karbhari Raut was cultivating the field of deceased Gondyabai and after her death, she is cultivating the field till today. The plaintiff was not resident of Payarpada Godari. The plaintiff has obtained the will from deceased Gondyabai on 25/01/2000, by practising fraud on her. Deceased Gondyabai has bequeathed the suit property in her favour on 10/03/2003 and it is a registered document. In the year 2011, the plaintiff came to reside with her husband at Payarpada. She came to know that deceased Gondyabai has executed a will in favour of the plaintiff, by practising fraud on her. She admitted that on 21/10/2014, Gondyabai died. Since then, defendant and her husband are cultivating the field and taking crops. The plaintiff has filed the suit in collusion of defendant No.2, who is husband of deceased Gondyabai. She has prayed

for declaration that the will deed dated 28/06/2012 be declared as null and void and the plaintiff and defendant No.2 be restrained from disturbing the possession of defendant No.1 on the suit property.

4] Considering the averments of both parties, following points arise for my determination, which I decided as follows :-

Sr.No	Points	Findings
1	Whether plaintiff has made out prima facie case ?	Yes.
2	Whether balance of convenience lies in favour of the plaintiff ?	Yes.
3	Whether irreparable loss would be caused to the plaintiff, if injunction is not granted ?	Yes.
4	What order ?	As per final order.

REASONS

AS TO POINTS NO.1 TO 3 :-

5] It is undisputed that the suit property belonged to deceased Gondyabai, she has executed will dated 25/01/2000 in favour of the plaintiff, which is acted upon and there is no dispute about that will and Gondyabai died on 21/10/2014.

6] It is the case of the plaintiff that on 28/06/2012, deceased Gondyabai executed a will in respect of the suit property in her favour,

which is registered document and by that will, she has become exclusive owner of the suit property. After death of Gondyabai, she is cultivating the suit field. On the other hand, it is the case of defendant No.1 that deceased Gondyabai executed will dated 10/03/2003 in respect of the suit property in her favour. Since then, her father-in-law and her husband are cultivating the suit property till today. She is in possession of the suit property and the plaintiff is disturbing her possession.

7] Both plaintiff and defendant No.1 are disputing about the legality of will dated 28/06/2012 and 10/03/2003 respectively. Whether will deeds are legal, whether they are executed by practising fraud, this fact will be decided on the basis of merits. Now at this juncture, as per law of will, last will of the testator has to be considered as a legal will, unless and until it is declared as invalid. Therefore, prima facie case is in favour of the plaintiff. Therefore, I hold point No.1 in favour of the plaintiff.

8] It is argued by the learned counsel for the plaintiff that she is cultivating the suit field and after death of deceased Gondyabai, she is cultivating the suit field along with her husband. She has filed 7/12 extract along with list Exh.30 at Sr.No.2, which shows name of the plaintiff is recorded in the record of rights of the suit property and her name is shown in crop statement for the year 2015-16.

9] It is argued by the learned counsel for defendant No.1 that revenue record is prepared for the fiscal purpose and it cannot be used for title of the property. No doubt, revenue records are prepared for fiscal purpose, but at this stage, application Exh.5 is to be decided on the basis of pleadings and documents filed on record. The 7/12 extract is a

document prepared under law and it has some presumptive value and that can be used to decide such type of urgent application. The plaintiff has also filed affidavits of Suresh Pandu Choudhary, Laxman Janu Choudhary, who are adjacent owners of the suit property and who deposed on oath that the plaintiff is cultivating the suit field. Defendant No.1 has also filed affidavits of Pandu Chimana Gaikwad, Pandit Shankar Sable, Laxman Popat Bagul and Kishor Narayan Hire, who are adjacent owners of the suit field and Kishor Narayan Hire is the Police Patil of Goldari village, who deposed on oath that defendant No.1 is in possession of the suit field and cultivating it. Now, there is oath against oath on affidavits. As I hold prima facie case in favour of the plaintiff and 7/12 extract of the year 2015-2016 shows that the plaintiff is taking crop in the suit field, therefore, at this stage, considering the documentary evidence, balance of convenience lies in favour of the plaintiff. Accordingly, I hold point No. 2 in favour of the plaintiff.

10] As I hold points No. 1 and 2 in favour of the plaintiff, there are crops standing in the suit field and if temporary injunction is not granted against defendant No.1, then there is every chance that she will spoil all crops and plaintiff would sustain huge loss, which cannot be compensated in terms of money. On the other hand, if injunction is granted, no irreparable loss would be caused to defendant No.1. Therefore, I hold point No.3 in favour of the plaintiff.

AS TO POINT NO.4 :-

11] As I hold points No. 1 to 3 in favour of the plaintiff, I pass following order.

ORDER

1. The application is allowed.
2. Defendant No. 1, her husband, her relatives, agents, servants are hereby restrained by temporary injunction, from entering into the suit field and disturbing the plaintiff, till the disposal of this suit.
3. Costs in cause.

Sd/-

Dindori.
Date :- 30/10/2017.

(V.A. Tekwani)
Civil Judge,J.D., Dindori.