

ORDER BELOW EXH.5 IN REG.CIVIL SUIT NO.104/2011

(Delivered on 12.07.2012)

1 This is an application filed by the plaintiff for temporary injunction as per Order 39 Rule 1 and 2 of Code of Civil Procedure.

2 It is contended by plaintiff that agricultural land Gat No.58 admeasuring 1 H 8 R of village Ahmed Gavthan, Tal; Surgana (hereinafter referred to as suit land) was originally owned by one Kashiram Laxman Jadhav. Plaintiff Bhika Manglu Raut purchased the suit land from original owner Kashiram Jadhav through registered sale-deed dated 6.8.1982. Accordingly, Mutation entry No.46 was effected and plaintiff's name recorded in record of right as a owner. It is contended that one Laxmna Bhoje (father of defendant No.1 and 2 and grand father of defendant No.3 to 6) filed one Civil Suit against the owner Kashiram Jadhav bearing RCS No.202/1982 for recovery of possession of suit land, that suit was decreed. Therefore, original owner Kashiram Jadhav preferred Appeal No.379/83 in District Court, Nashik. But meanwhile Laxman Kaevji Bhoje (father of defendant No.1 and 2) filed Reg. Darkhast No.2/83 and thereby got the possession of suit land. However, in Civil Appeal No.379/83 is allowed and thereby matter is remanded back in trial Court for re-consideration. Thereafter, Laxman Kevaji Bhoje withdrawn original RCS No.202/83 on 18.6.1991.

3 It is further contended that original owner Kashiram Jadhav and present plaintiff filed Civil Misc.Appln.No.8/91 for recovery of possession of suit land as per Sec.144(1) of C.P.C., that application was allowed on 14.12.1995 and thereafter, on 3.1.96

plaintiff got the possession of the suit land through Court Bailiff in presence of panch witnesses. Since then plaintiff cultivate the suit land and taking the benefit of crops of it.

4 It is contended that father of defendant No.1 and 2 Laxman Kevaji Bhoje filed Civil Appeal No.154/2003 that appeal is allowed. Therefore, present plaintiff preferred second Appeal in Hon'ble High Court, Bombay bearing Appeal No.632/2007 that appeal allowed on 16.4.2010 and set-aside the order of first Appellate Court of Reg.Civil Appeal No.154/2003 and suit matter remanded to first Appellate Court for re-consideration. Thereafter, again RCA No.154/2003 decided by District Court, Nashik and on 3.12.2010 said appeal dismissed and the order of trial Court in Civil Misc.Appln. No.8/91 confirmed. There is no appeal preferred by the defendants against the order passed on 3.12.2010 in RCA No.154/2003. Plaintiff contended that he got the possession of suit land in the year 1996 as per Civil Misc. Appln.No.8/91 and the same is confirmed in High Court and thereafter, as per the order of District Court, Nashik dated 3.12.2010. Hence, defendants become anger and in the feel of anger they started to abused the plaintiff. It contended that on 17.6.2011 defendants entered into the suit land and abused the plaintiff and gave threat not to cultivate the suit land. Thereafter, again on 5.9.2011 defendants came and gave threat to the plaintiff. Plaintiff approached to police station and narrated the above fact, but police have not taken any action against the defendants. Hence, cause of action arose and plaintiff constrained to file present suit and application. It is

submitted that suit will decide on merit and it will require sufficient time. Meanwhile, if defendants continued cause obstruction then plaintiff will suffer irreparable loss. Therefore, it is prayed by plaintiff to restrain the defendants from causing obstruction to his possession of the suit land. Lastly, prayed for application may kindly be allowed.

5 Defendants appeared and contested the application by filing W.S cum say at Exh.24. They denied the contents of the application in toto. They denied the possession of plaintiff over the suit land. Defendants further contended that plaintiff has suppressed the material facts before the court and not come with clean hands. Hence, application is liable to be rejected. Defendants contended that as per the decree of RCS No.202/82 and as per Reg.Darkhast No.2/83 they got the possession of suit land and they cultivate the same. Defendants contended that as per Civil Misc.Appln. No.8/91 plaintiff never got the possession of suit land. Moreover, the documents in respect of possession of suit land delivered to the plaintiff dated 3.1.1996 are false and fabricated. Defendants contended that they have filed writ petition against the judgment of RCA No.154/2003 dated 3.12.2010. Defendants contended that plaintiff never got the possession of suit land nor he taking the crops of it. Defendants denied the cause of action arose dated 5.9.2011 and 17.7.2011. Defendants contended that application is false and baseless. Lastly, prayed for rejection of the application.

6 Perused rival pleadings of the parties. Heard, learned

Adv. Shri. D.R. Kaiche plaintiff and Adv. Shri. N.R. Walke on behalf of defendants. Considering the above rival pleadings and arguments, as well as the documents placed on record, following points arise for the determination. My findings recorded against each point with the reasons stated below:

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
i)	Whether plaintiff has made out prima facie case?	..In the affirmative.
ii)	Whether balance of convenience lies in favour of plaintiffs ?	..In the affirmative.
iii)	Whether plaintiff will suffer irreparable loss, if temporary injunction is refused or rejected ?	..In the affirmative
iv)	What order ?	..As per final order.

: REASONS :

As to Point No.1 to 4:

7. For obtaining equitable and discretionary relief of temporary injunction, in that respect plaintiff has to show that, he has prima facie case. Therefore, first of all, it is necessary to see, whether plaintiff has made out prima facie case or not. Heard, both the learned counsels at length and gone through the documents available on record.

8 On perusal of Exh.3/1 and 3/2, which disclosed that name of plaintiff recorded in the column of possession and cultivation. The Revenue Record shows that since 1976 to 2011 plaintiff cultivate suit land and taking the crops like Rice and Nagli. The revenue record well supported with the contentions of plaintiff. On perusal of the

copy of the Civil Misc.Appln.8/1991, second Appeal No.632/2007, Reg.Civil Appeal No.154/2003 as per Exh.3/4, Exh.3/6, and Exh.3/7, which disclosed that as per the order in Civil Misc.Appln.No.8/1991 plaintiff got the possession of the suit land. In second Appeal the direction given to the First Appellate Court to consider the matter again and disposed off the appeal as per law. Accordingly, first Appellate Court decided the matter on merit on 3.12.2010 and thereby appeal filed by the present defendants dismissed and confirmed the order passed in Civil Misc.Appln.No.8/1991. These above documents clearly shows that the possession got by the plaintiff as per Civil Misc.Appln.No.8/1991 is confirmed till 3.12.2010. Moreover, at present there is any record to show that defendants have preferred an Appeal against the judgment of RCA No.154/2003 dated 3.12.2010. On the other hand, if one perused the document filed as per Exh.3/5, which clearly shows that on 3.1.1996 in presence of panch witness plaintiff got the possession of suit land. Defendants came with the case that document as per Exh.3/5 are false and fabricated, but in that respect defendants failed to brought any material record before the court. Therefore, at this juncture it appears that, in view of possession receipt and panchanama of suit land executed on 3.1.1996, plaintiff got the possession of suit land and thereafter, he cultivate the same. On the contrary, there is no any record to show that defendants cultivate the suit land and taking benefits of it.

9 Considering the above discussion, it reveals that the document available on record well supported with the contentions of

plaintiff and not with the contentions of defendants. Admittedly, the evidence of either side yet to come and matter will decide on merit after the completion of evidence. But at this juncture, according to documents placed on record, it reveals that plaintiff got the possession of suit land and he cultivate the same. Moreover, the contentions of defendants required strict proof, which will be decided at the stage of evidence. But at this juncture, by way of documentary evidence, plaintiff satisfied that he has prima facie case and balance of convenience lies in his favour. If temporarily injunction refused then there is possibility that defendants will try to obstruct the possession of plaintiff, by which plaintiff will suffer irreparable loss. On the other hand, if temporary injunction is allowed favour of plaintiff then defendants will not suffer any hardship. From the above said reasons, I am of the view that, plaintiff has made out case as to issue temporary injunction against the defendants. Therefore, I answer point No1. to 3 in the affirmative and proceed to pass the following order.

: O R D E R :

- i) Application below Exh.5, for temporary injunction is allowed.
- ii) Defendants, their agent, workers, relatives etc are hereby temporarily restrained from causing obstruction to the possession of plaintiff over the suit land i.e. Gat No.58 admeasuring 1 H 8 R situated at village Ahmed Gavthan, Tal: Surgana, Dist: Nashik till final decision of the suit.
- iii) Costs in main cause.

Date: 12.07.2012
Dindori.

(M.I. Lokwani)
Civil Judge Junior Division,
Dindori.