

**Order below Exh.5 in Regular Civil Suit No.106 of 2014**

1] The plaintiffs have filed this application under Order XXXIX Rule 1 and 2 of Civil Procedure Code for grant of temporary injunction to restrain the defendants from interfering in their possession over the suit property. The suit property is consisting of field bearing Gut no.455 totally admeasuring 6H 55R out of it 3H area, having boundaries towards east- Gut No.429, 456, 458, towards west- Gut o.488, 403, 482, towards south- Gut no.459, 464, 463, 462, towards north- Gut no.433, situated at village Bhatgaon, Tal-Chadwad, Dist- Nashik. (*here-in-after referred as suit property for sake of convenience*).

2] It is the case of the plaintiffs that, suit property was originally owned by father of defendant no.1 Chabu Gangaram Kandalkar. He has executed a conditional sale-deed of the suit property in favour of father of defendant no.1 on 21/04/1970 for two years. He has also delivered its possession to him. He has not redeemed the property within two years of execution of conditional sale-deed, therefore, the name of Gopala Mandale was entered as owner of the suit property in its record. He has died on 19/05/1990 and therefore the plaintiffs being his legal heirs have mutated their names in the revenue record of the suit property by mutation entry no.324. The defendants do not have any right in the suit property, however, they have filed RCS No.44/2013 against plaintiffs in respect of the suit property and started obstructing their possession over the same. On 30/07/2014 the defendants have obstructed the ploughing of field by the plaintiffs, therefore, they have prayed for restraining them from obstructing their possession till decision of the suit.

3] The defendants vide their say at Exh.13 denied and disputed the claim of the plaintiffs. They submitted that the suit property was originally bearing survey no.141 and in the consolidation scheme it was given Gut no.460. Thereafter, the villages Bhatgaon and Wadi were divided and it was renumbered as Gut no.455. Originally the suit property was owned by father of defendant no.1. He has executed a conditional sale-deed of 3 Acres area from the suit property for the consideration of Rs.2,000/- on 21/04/1970 in favour of Gopala Mandale. Accordingly, the mutation entry no.68 was effected, however, the area under the conditional sale-deed was mentioned as 3H instead of 3 Acres i.e. 1H 20R. In fact, 1H 20R area was given in possession of Gopala Mandale in pursuance of the conditional sale-deed. He had died on 19/05/1990 and the defendant nos.1 to 6 being his legal heirs have mutated their names in the said property by entry no.324. After the death of Gopala Mandale his wife Shewantabai has executed a redemption deed in favour of defendant no.2 on 07/05/1991 for the consideration of Rs.5,000/- for the area of 1H. Since then the name of defendant no.2 is appearing in the crop inspection of the suit property. Therefore, the defendants have prayed for dismissal of the application.

4] Considering the rival pleadings of both the parties and documents produced in support of it following points arise for my determination to which, I record my findings thereon for the reasons to follow:

	<b><u>POINTS</u></b>		<b><u>FINDINGS</u></b>
1]	Whether plaintiffs are having prima facie case ?	..	In the Negative.

2]	Whether the balance of convenience lies in favour of plaintiffs ?	..	In the Negative.
3]	Whether the plaintiffs will suffer irreparable loss, if injunction is not granted ?	..	In the Negative.
4]	What order ?	..	As per final order.

### REASONS

5] I have heard learned counsel for plaintiffs Shri. P.K. Patil and learned counsel for defendants Shri.G.V. Thakre

6] In support of the application the plaintiffs have filed the copy of 7/12 extract of the suit property, copy of conditional sale-deed, copy of entry no.6D, mutation entry no.1605.

7] Before proceeding to discuss the facts of the present case it requires to be mentioned that grant of temporary injunction is a discretionary relief which discretion the Court is required to exercise by keeping in mind the principles of justice, equity and good conscious. To succeed in the application, the plaintiffs are required to show the existence of their legal right and consequent obligation upon the defendant to not to obstruct the enjoyment of that right of plaintiff. An obligation is defined as duty enforceable by law. Keeping these principles in mind I proceed to discuss the facts of the case.

#### As to point no.1

8] From the pleadings of the parties to the proceedings it is not seriously disputed on record that the father of defendant no.1 has

executed a conditional sale-deed on 21/04/1970 in favour of Gopala Mandale i.e. predecessor in title of plaintiffs for the consideration of Rs.2,000/-. However, the area of the suit property which is put to subject of conditional sale-deed is in dispute. Plaintiffs submitted that he has executed conditional sale-deed of 3H area. On the contrary, the defendants have submitted that it was 3 Acres area. The defendants also submitted that wife of Gopala i.e. Shewantabai has executed a redemption of said property in favour of defendant no.2 on 07/05/1991 for the consideration of Rs.5,000/-. On the basis of these facts the plaintiffs are claiming protection of possession over the suit property. A perusal of conditional sale-deed which is a type of mortgage goes to show that the area of the suit property mentioned in the said document is 3 Acres instead of 3H. The plaintiffs have based their source of title to this document of conditional sale-deed. There is nothing mentioned in said sale-deed that the area of the suit property which was mortgaged is 3H. Therefore, the plaintiffs cannot claim protection of their possession over the area which was not the subject of mortgage. In fact, the revenue entries showing their possession over 3H area in the suit property is of no help to the plaintiffs while seeking equitable relief. It was for the plaintiffs to explain as to how they came in possession of 3H area when the mortgage by conditional sale-deed have specifically mentioned the area of mortgage to the extent of 3 Acres . For these reasons plaintiffs have failed to prove prima-facie case in their favour. Hence, I answer point no.1 in negative.

**As to point nos.2 & 3**

9] The plaintiffs have admitted that Gopala Mandale who was the predecessor in title of defendants was the owner of suit property. Therefore, it becomes clear that the defendants are original

owner of the suit property. Chabu Kandalkar had executed a mortgage by conditional sale-deed in favour of father of defendant no.1 for the area of 3 Acres. He had also delivered its possession to Gopala. Instead of 3 Acres, the plaintiffs have claimed protection of their possession over 3H of the area of the suit property. There is no dispute that the defendants are owner of suit property excluding the area mentioned in the conditional sale-deed. In such circumstances, in the absence of any convincing documentary evidence, plaintiffs prayer to protect their possession over 3H area is not at all justified. Therefore, balance of convenience do not lie in their favour. Similarly, the defendants being the owners of the suit property excluding the area of mortgage by conditional sale, if injunction is granted they would be deprived of enjoyment of their lawfully owned suit property and therefore they would be put to irreparable loss than the plaintiffs. It must be kept in mind that plaintiffs have not prayed for protection of their possession over the area of the mortgage, instead they have exceeded their prayer. Hence, I answer point nos.2 and 3 in negative.

**As to point no.4**

10] For the reasons stated above, I proceed to pass following order :

**ORDER**

- 1) The application Exh.5 is rejected
- 2) Costs in cause.

Chandwad  
Date : 30/09/2014.

[ **R.B. Giri** ]  
Civil Judge Junior Division,  
Chandwad, Dist-Nashik.