

**ORDER BELOW EXH.05****R.C.S. No. 135/2019.**

(Passed on : 13.10.2022)

1. The plaintiffs have filed present application restraining the defendants from making obstruction to their possession till the decision of the suit.
2. It is the contention of the plaintiffs that the land Gat No.7, ad-measuring 2-5 H.R., situated at Bhingare, Tal. Yeola, Dist. Nashik was originally owned by Zipru Punja Mali which is the suit property in the present suit. He was having no issues. The father-in-law of the plaintiff was the son of sister-in-law of Zipru. He was frequently visit to the Zipru and look him after by providing food and medicine. Hence, due to love and affection, Zipru has executed registered will in favour of the father-in-law of plaintiff namely Jayram Bapu Barde and hence, he become the owner of the suit property and taking crop in it. The deceased Jayram Barde has given the suit property to his son namely Sopan Barde by way of registered will. All the plaintiffs are the legal heirs of Sopan Barde.
3. The plaintiff and his ancestors used to go out of village for labour work. By taking disadvantage of this fact, the defendant No.1 has prepared false will of Zipru on 01.09.1990 and mutated his name to the suit property by mutation entry No.694. When the plaintiffs came across with this fact, they filed an application before S.D.O. in the form of R.T.S. Appeal No.92/2008. The said application was decided on merit on 07.11.2008 and mutation entry No.694 was declared as illegal and it was directed that the names of Trambak Barde and Reshma Barde be mutated to the suit property by way of mutation entry No.718. Thus, since 07.11.2008, the plaintiff and his father-in-law was in possession of the suit property and taking the crop.

4. The defendant No.1 has filed R.T.S. appeal before the Collector against the order of S.D.O. Before the mutation entry Nos.694 and 718 were certified, the defendant No.1 has filed probate proceeding in respect of will of deceased Zipru. In the said probate proceeding, the plaintiffs have filed their say stating that they become the owners of the suit property by way of the will dated 05.06.1979. In the said proceeding, the court has passed the order on 07.04.1993 and declared that the will in favour of defendant No.1 dated 01.09.1990 was illegal, whereas, the will in favour of the father-in-law of the plaintiff dtd. 05.09.1979 was legal.

5. The defendant No.1 has filed appeal before the Hon'ble High Court against the order of Hon'ble District Court. The Hon'ble High Court has dismissed the appeal and confirmed the order of District Court on 17.12.2007. Thereafter, the defendant No.1 has filed Civil Suit R.C.S. No.224/2013 in the Yeola Court. The defendant has tried to mutate the suit property in his name by way of mutation entry No.899 by giving false information to Tahsil court. The plaintiff has filed appeal before the Revenue Court for the cancellation of mutation entry No.899. Before that, the father-in-law of the plaintiff has filed Civil Suit bearing R.C.S. No. 154/2010. The said suit was dismissed in default.

6. When the plaintiff has taken the 7/12 extract of suit property in June-2019, he found the names of defendant Nos.1 to 9 on it. Thereafter, he came to know that he was cheated. Before that, the defendant No.1 has obstructed to the possession of the plaintiff over the suit property and threatened him to kill and hence, the plaintiffs have filed this application.

7. The defendant No.1 has filed his say below Exh.21 and denied the contents of the application. It is his contention that the suit property is in his

possession since last many years. He has also constructed Datta Mandir in the suit property. He has also dig the well in it. The defendant No.1 is in possession of suit property since last 40 years.

8. The defendant No.1 has denied that the father-in-law of the plaintiff was the son of daughter-in-law of Zipru and he look after him. Further, he has denied that Zipru executed will in favour of Jayram and Jayram executed will in favour of his son namely Sopan. Further, he has denied that the plaintiffs are the legal heirs of deceased Sopan. As per the knowledge of defendant No.1 Bababai and Sopan are the real cousin brother and sisters.

9. The plaintiff was never in possession of the suit property. He never took crops in it. Though, the order of Revenue court was against the defendant No.1, the defendant No.1 is in possession of the suit property. Further, he has denied that he got executed false will. The plaintiff is not the owner and possessor of the suit property. Further, he has denied that the mutation entry No.899 was falsely prepared. The suit property was in possession of the defendant No.1, said fact is known by the plaintiff. Further, the defendant No.1 has denied that he has assaulted to the plaintiffs. By taking disadvantage of similarity in name, the plaintiffs have filed this false suit.

10. The defendant No.1 has denied that the plaintiffs are the owned and possessors of the suit property by way of will of Zipru. Further, he has denied that the plaintiff Nos.1 to 4 are the legal heirs of deceased Sopan. No deed was executed in favour of Sopan Barde. The suit property was initially owned by Zipru Punja Mali. As he was issue-less, he has executed the will of the suit property in favour of defendant No.1 and Trambak Barde and Reshmabai Barde on 05.06.1979. Thereafter, the relations of Zipru with Trambak and Reshmabai became sore, he has executed another will in favour of Namdeo

Jangalu Mali on 01.09.1990. The suit property was in possession of Zipru during his lifetime and after his death, defendant No.1 became the owner of the suit property. After the death of Zipru, dispute in respect of will in the name of plaintiff and defendant arises and will in favour of the defendant No.1 was decided as legal and hence, the defendant NO.1 was the owner and possessor of the suit property. Plaintiffs never resided in village Bhingare. They are not concerned with the suit property. But as decision was passed in favour of the plaintiffs, their names was mutated to the suit property. But the suit property remained in the name of defendant No.1.

**11.** The suit property was in the possession of defendant No.1 hence Jayram Barde, Nivrutti Barde, Shankar Barde, Dnyaneshwar Barde, Balu Barde have filed R.C.S. No. 154/2010. Present defendant appeared in that suit and filed his W.S. It is the contention of the defendant No.1 that even if the plaintiffs are the owners of the suit property by way of will, but the defendant No.1 become the owner of suit property by way of adverse possession. The possession of defendant No.1 was never declared as illegal by any court. So also, nobody has asked possession of the suit property from him. Thus, the defendant No.1 is in possession of suit property uninterrupted and continuously. The order of the Revenue court passed in favour of the plaintiff during the pendency of the suit, is not binding on the defendant No.1. On the contrary, Jayram Babu Barde has mentioned in his say given R.C.S. No.224/2013, that the defendant No.1 is the owner and possessor of the suit property and hence, the defendant No.1 has withdrawn that suit. Only to harass the defendant No.1 the plaintiffs have filed the suit and application. Thus, he has prayed for rejection of the application.

**12.** Defendant Nos.2 to 9 have not filed their W.S. Hence, no W.S. order is passed against them.

13. Considering the rival contentions of both the sides, following points arise for my determination, to which I have recorded my findings for the reasons stated below:-

<b>SR. NOS.</b>	<b>POINTS.</b>	<b>FINDINGS.</b>
1.	Whether plaintiffs are having <i>prima facie</i> case ?	Affirmative.
2.	Whether balance of convenience lies in favor of plaintiffs ?	Affirmative.
3.	Whether plaintiffs will suffer an irreparable loss if injunction is not granted ?	Affirmative.
4.	What order?	As per final order.

### REASONS

#### As to Point Nos. 1 to 3:-

14. It is the contention of the plaintiffs that Zipru alias Ziprya Punja Malil had executed will in favour of Jayram Bapu Barde who is the father-in-law of the plaintiff No.1 on 05.06.1979. Jayram Bapu Barde has executed will in favour of his son namely Sopan Jayram Barde (Sonwane), by way of will No. 453/2013. In order to substantiate their contention, the plaintiffs have filed the will dated 01.02.2011. I have gone through it. It was executed by Jayram Bapu Barde in favour of his son namely Sopan Jayram Barde in respect of Gat No.7. By this will, Jayram has given Gat No.7 to his son namely Sopan.

15. The plaintiffs have filed death certificate of Jayram Bapu Barde. It shows that he died on 04.06.2016. The plaintiffs have filed death certificate of Sopan Jayram Sonwane. It shows that he died on 18.10.2014.

**16.** It is the contention of the defendant No.1 that Zipru alias Ziprya Punja Mali had executed will of the suit property in favour of defendant No.1 and deceased Trambak Tukaram Barde and Reshambai Trambak Barde on 05.06.1979. Thereafter, again Zipru alias Ziprya Punja Mali had executed a will in respect of the suit property only in favour of defendant No.1. The defendant No.1 has not filed will dated 05.06.1979 and 01.09.1990.

**17.** Further, the defendant No.1 has filed the 7/12 extract of Gat No.7. I have gone through it. It shows that the name of Ziprya Punja Bhill (Mali) was bracketed and Namdeo Jangalu Mali is the owner of it. Further, he has filed a letter issued by Block Development Officer in favour of Talathi regarding the entry of well in 7/12 extract of Gat No.7. Further, the defendant No.1 has filed mutation entry No.899. I have gone through it. It shows that the name of Namdeo Jangalu Mali was mutated to Gat No.7 as per the judgment and decree in R.C.S. 224/2013 and the order of Tahsildar dated 23.08.2018.

**18.** The plaintiffs have filed the copy of judgment in First Appeal No.573/1995 passed by the Hon'ble Bombay High Court. I have gone through it. It shows that Namdeo Mali has filed this appeal against Jayram Barde, Trambank Barde, Reshmabai Barde. In this judgment, the Hon'ble Bombay High Court has observed that the reasoning given by the Ld. Court and the order as passed in favour of the opponent Nos.1 to 3 granting probate is correct. In the result, the rejection of claim of the appellant for grant of probate is also correct.

**19.** The plaintiffs have filed the copy of judgment in First Appeal No.573/1995 in which the probate issued in favour of Jayram Barde was confirmed by the Hon'ble Bombay High Court. The defendant No.1 has filed the 7/12 extract and mutation entry No. 899 and other revenue documents.

But the judgment filed by the plaintiffs in First Appeal No.573/1995 has more probative value than the documents of the defendant No.1. Hence, I answer point No.1 in the “**affirmative**”.

**As to point Nos.2 and 3 :-**

20. The plaintiffs became the owners of the suit property by way of will dated 01.02.2011 as the legal heirs of Sopan. Hence, if the injunction is not granted, the plaintiffs will suffer an irreparable loss as they are the owners of the suit property by way of will dated 01.02.2011 and the probate confirmed in favour of Jayram Barde. Whereas, if the injunction is not granted, no loss would be caused to the defendants as they are not the probate holders. Hence, balance of convenience lies in favour of plaintiffs. Accordingly, I answer point Nos.2 and 3 in the “**affirmative**”.

**As to point No.4 :-**

21. In view of discussion made above and finding given to point Nos.1 to 3 above, I pass the following order:-

**O R D E R**

1. The application at Exh.5 is allowed.
2. The defendant Nos.1 to 9 are hereby temporarily restrained from making obstruction to the possession of the plaintiffs over the suit property till the decision of the suit.

Dictated and pronounced in open Court.

**Place : Yeola.**  
**Date : 13.10.2022.**

**(M. S. Ligade)**  
**Civil Judge, Junior Division,**  
**Yeola, Dist. Nashik.**

### **CERTIFICATE**

I affirm that the contents of this PDF file Order / judgment are same, word to word, as per the original order / judgment.

Name of Stenographer : P.A. Bargal (L.G. Stenographer)  
Name of the Court : Shri. M. S. Ligade, C.J.J.D.,  
Yeola, Dist. Nashik.  
Date of Order / judgment : 13.10.2022.  
Order / judgment signed by  
Presiding officer on : 13.10.2022.  
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