

ORDER BELOW EXH. 5 IN REGULAR CIVIL SUIT No. 225/2015

1] This is an application supported by an affidavit under Order 39 Rules (1) & (2) of the Civil Procedure Code for temporary injunction restraining defendant No. 1 from causing obstruction & interference into the peaceful possession of the plaintiff over suit properties described in Para 1(A) and 1(B) of the plaint, situated at Mauje Nimgaon-Sinnar, Taluka Sinnar, Dist Nashik.

In nutshell facts of plaintiff's case, are as under:-

2] The plaintiff submitted that, the property described in para 1(A) of the plaint was received to the ancestors of plaintiff and defendant Nos. 2 to 5 by way of exchange-deed and the property described in Para 1(B) received to the plaintiff by way of heirship and both properties were given temporarily in possession of plaintiff for family arrangement. The plaintiff further submitted that, there is 25 feet wide Baragaon Pimpri tar road runs towards southern side of suit property described in Para 1(A) and 1(B) and to the southern side of road defendants Gat No. 741, 742 and 743 are situated. Despite of this position, prior to 15 days of institution of suit, defendant No. 1 brought the water from *Darana River* by laying pipeline (siphon) through the land of plaintiff and from the house situated in the land with the help of defendant Nos. 2 to 5 and also dug the ditches for water storing near the house of plaintiff and trying to enter in the land of plaintiff. The plaintiff trying to give understanding, but defendant did not pay any hid and stated that as his land acquired in road and he will plough that much in plaintiff's land. The plaintiff has prima-facie case, balance of convenience tilts in his favour and if the application is not allowed and acts and deeds of defendant No. 1 continues, then the plaintiff will suffer irreparable loss. Hence, prayed for allowing application.

3] On the other hand, defendant Nos. 1 to 5 appeared and filed written statement-cum say vide Exh. 28 along with defendant Nos. 2 to 5

and denied contentions made in suit as well as application in toto. The suit suffers from non joinder of necessary parties as plaintiff has not made party to Bimabai Nivrutti Khule, Kisnabai Narhari Ugale, Bhimabai Narhari Ugale, Alka Ramesh Khandave and Vimal Madhav Buchkul. There is no cause of action arose to file the suit. The description of properties is incorrect and wrong. They further submitted that, defendant No. 1 has brought the water by laying pipeline from *Darana River* by spending huge amount and taking irrigated crops from it and due to said development of defendants there is jealousy in the mind of plaintiff and on the basis of imaginary reasons filed this false suit. The defendants have dug the ditches for storing water in their land and not in the land of plaintiff. The plaintiff has no concern with it. The lands of defendants bearing Gat No. 741, 742 are situated towards southern side of Baragaon-Pimpri Road and Gat Nos. 741 and 742 are divided in two parts, out of which one part is on southern side and another part is on northern side of Baragaon-Pimpri Road and therefore, the lands of plaintiff and defendant Nos. 2 to 5 Gat No. 759 and 760 are situated at northern side adjacent to lands of defendants i.e. land situated towards northern side adjacent to tar road is in possession of defendant No. 1 since long. The defendants never caused obstruction to the plaintiff. The plaintiff with the help of village map of land Gat Nos. 760, 759, 741, 742 and 743 trying to grab the land of defendant No.1 filed this false suit. This act of plaintiff is illegal and if it is continue, then defendant No.1 will suffer irreparable loss, therefore, in order to decide the misunderstandings between the parties measurement of lands is necessary. If measurement take place, then it will help to fix the boundary marks. The plaintiff has no prima-facie case and balance of convenience also does not tilt in his favour. If application is allowed, then the defendants will suffer irreparable loss. Hence, prayed for rejection of application.

4] On going through the averments of both parties, following points arise for my determination and I have recorded my findings thereon

for the reasons given below :-

Sr.No.	Points	Findings
1	Whether plaintiff has prima-facie case in his favour ?	In the affirmative.
2	Whether balance of convenience lies in favour of plaintiff ?	In the affirmative.
3	Whether plaintiff will suffer irreparable loss, if temporary injunction is not granted ?	In the affirmative.
4	What order ?	Application Exh. 5 is partly allowed.

REASONS

5] Learned advocate Shri D.A. Rahatal for plaintiff and Shri A. L. Gurule for defendants. Learned advocate for plaintiff relied upon citation of Hon'ble Bombay High Court as held in **Mahesh Zangoji Ghotekar Vs. Prayas Sakhare [2016(4) Mh.L.J.] 134.**

6] The claim of temporary injunction made by the plaintiffs needs to be considered by the Court in view of the provisions laid down under Order 39 Rules (1) and (2) of C.P.C. which opens with the words, wherein any suit, it is proved by the affidavits or otherwise temporary injunction may be granted by the Court.

As to Point Nos. 1 to 3 :

7] As per contention of plaintiff suit properties described in Para 1(A) Gat No. 760 is allotted to the share of his ancestor and ancestors of defendant Nos. 2 to 5 by exchange-deed and in family arrangement i.e. western side portion of Gat No. 760 of 0H.51R+0H.02R(P.K.) is given in temporary possession of plaintiff. The plaintiff filed on record 7/12 extract of Gat No. 760 at list Exh. 3/3. On perusal of 7/12 extract the entire area of Gat No. 760 is 1H.08R. Further, the plaintiff has filed on record true copy of Exchange-deed, which is unregistered document. On perusal of 7/12 extract of Gat No. 760 along with plaintiff, defendant Nos. 2 to 5 and others are also owners to Gat No. 760 and in cultivation column there is

entry as 'सामाईक खुद्द'. There is nothing to show that western side 54R area out of Gat No. 760 is in exclusive possession of the plaintiff. On the other hand, defendant Nos. 2 to 5 in their written statement admitted that suit property described in Para 1A of the plaint was allotted to the ancestors of plaintiff and defendant Nos. 2 to 5 by exchange-deed and they are in possession thereof. The defendants denied that as family arrangement suit property Gat No. 760 was given in possession of the plaintiff. But, the defendants have specifically mentioned that the plaintiff and defendant Nos. 2 to 5 are having their possession over the suit property Gat No. 760. It means that, the plaintiff along with defendant Nos. 2 to 5 are having joint possession over the suit property described in Para 1A i.e. Gat No. 760.

8] The plaintiff in respect of his property described in Para 1B of the plaint has filed on record certified copy of 7/12 extract at list Exh. 3/2. On perusal of this 7/12 extract along with plaintiff, defendant Nos. 2 to 5 and others are also co-owners and co-possessioners to the Property Gat No. 759. The plaintiff is coming with specific case that he is having possession over western side of Gat No. 759 to the extent of 56R. Defendant No. 1 has denied the same and specifically stated that the plaintiff and defendant Nos. 2 to 5 are in joint possession of suit property described in Para 1B i.e. Gat No. 759. This is a suit for perpetual injunction to restrain defendant No. 1 from interfering into the peaceful possession of the plaintiff over the suit properties. Prima-facie there is nothing on record to show that the plaintiff is having exclusive temporary possession over the area of western side portion mentioned in plaint. However, the plaintiff has succeeded in establishing that he is having joint possession over the suit properties along with defendant Nos. 2 to 5.

9] The relief claimed by plaintiff is against defendant No. 1. For that the plaintiff is relied upon citation of Hon'ble High Court as held in **Mahesh Ghotekar (Cited supra)**. I have gone through the observations

laid down by Hon'ble High Court in cited rulings. The said ruling is pertaining to Section 6 of the Specific Relief Act. Here, in case in hand the plaintiff has filed suit for perpetual injunction to restrain defendant No. 1 from interfering his possession over the suit properties.

10] As per contention of plaintiff at southern side of suit property Gat Nos. 760 and 759 there is Baragaon-Pimpri Road and after Baragaon Pimpri Road lands of defendant No. 1, Gat No 741, 742, 743 are situated to the southern side of Baragaon Pimpri Road and for that the plaintiff relied upon village map filed with list Exh. 3/1. On perusal of this map it appears that, Gat No. 741 and 742 at the southern side of road, Gat No 760 and 759 are at the northern side of the road. In between lands of plaintiff and defendants road passes. Further, 7/12 extract of suit property Gat Nos. 759 and 760 reveals four boundaries in which also at southern side there is road and 7/12 extract of Gat No. 741 of defendant No. 1 also reveals four boundaries, in which at the northern side of Gat No 759 and 760 there is road.

11] Despite of this position, defendant No. 1 has contended that Gat No. 741 and 742 are owned by defendant No.1 and from Gat No. 741 and 742 Baragaon-Pimpri road passes, therefore, Gat No. 741 and 742 were divided into two parts and on northern side of Baragaon Pimpri Road land of defendant No. 1 Gat No. 741 and 742 are there and thereafter lands of plaintiff are situated. From the pleadings of defendants it appears that after Baragaon-Pimpri Road at northern side land of defendant No.1 and thereafter lands of plaintiff and defendant Nos. 2 to 5 are situated. Except his oral contention there is nothing to show that Baragaon-Pimpri Road passes from Gat Nos. 741, 742 and at the northern side of Baragaon-Pimpri Road remaining portion of land Gat No. 741 and 742 of defendant No.1 is there. On the contrary, 7/12 extract of suit property as well as 7/12 extracts of lands of defendants filed by plaintiff and village map consistently shows that at the southern side of plaintiff's land Baragaon

Pimpri Road passes and after road lands of defendant No.1 are situated. As the plaintiff has claimed relief against defendant No.1, therefore, at this stage though the plaintiff has failed to prove his exclusive possession. The plaintiff has established his co-possession over the suit properties along with defendant Nos. 2 to 5. Prima-facie this itself sufficient to show that he has prima-facie case in his favour.

12] As discussed above, it transpires from the record that the plaintiff is in co-possession with defendant Nos. 2 to 5 in suit property Gat No. 760 and 759. The temporary injunction sought against defendant No.1 to restrain from interfering into his possession and from causing obstruction to the possession of plaintiff. The four boundaries mentioned by the plaintiff in Para (1) of the plaint corresponds with four boundaries mentioned in 7/12 extracts and village map. Defendant No. 1 is claiming his land and possession at the northern side of the road and at southern side of plaintiff's land, his remaining land is situated. This itself sufficient to infer that there is dispute in respect of four boundaries. It transpires that the defendants are denying possession of plaintiff adjacent to road is sufficient to infer that, defendant No. 1 causing interference to the possession of the plaintiff within four boundaries stated in the plaint. The plaintiff is having prima-facie case. Balance of convenience follows prima-facie case. The possession of plaintiff over the suit properties evident, therefore, his possession though it is co-possession with defendant Nos. 2 to 5 needs to be protected from the interference and obstruction of defendant No. 1, otherwise the plaintiff certainly will suffer irreparable loss.

13] The case of plaintiff is supported by his own affidavit. Considering ownership and possession of plaintiff over the suit properties, prima-facie case lies in his favour, if injunction is granted absolutely there is no harm to defendant No. 1 because it is only granted as to suit properties and same is not affected over the properties of defendants.

Accordingly, I answer Point Nos.1 to 3 in the affirmative.

As to Point No. 4:

14] In view of affirmative findings to Point Nos. 1 to 3 and as discussed above, I hold that the applications deserves to be allowed only against defendant No. 1 and no need to pass any order against defendant Nos. 2 to 5 as they are co-possessors, therefore, in answer to Point No. 4, I pass following order :

ORDER

- 1] Application Exh. 5 is partly allowed.
- 2] Defendant No. 1 is hereby temporarily restrained from causing obstruction to the peaceful possession of the plaintiff over the suit properties till final disposal of the suit.
- 3] Costs in cause.
(Dictated and pronounced in the open Court.)

Place : Sinnar. }
Date : 28.02.2017.}

Sd/xxx
(S.N.Ratkanthwar-Jawadwar)
Civil Judge (Junior Division), Sinnar.