

Order below Exh. 5 in Regular Civil Suit No. 47 of 2014

1. This is an application for temporary injunction restraining the defendant nos.1 to 7 from making construction in the share of plaintiffs in the suit property Gat no.156 and also restraining them from obstructing their possession, till the decision of the suit.

2. It is contended in the application that the lands Gat nos.25, 84, 85, 86, 138, 148, 155, 156, 174, 182, 183, 219, 222, 308, 309, 315, 316, 317, 348, 350, 352, 367, 370, 373, 487, 503, 506, 507, 587 & 588 situated at village Fangulgavhan, Tal.Igatpuri, Dist.Nashik, are the 'suit properties'. The suit properties were ancestral of plaintiffs and defendants. The partition of suit properties was taken place between plaintiffs and defendants and they are in possession of their separate share. The suit properties bearing Gat no. 86, 155, 156, 174, 182, 219, 222, 308, 315, 316, 348, 350, 353, 373, 487, 587 & 588 came to the plaintiffs in partition and they are in possession of those properties. However, their name was not mutated to some properties. But till today they are in possession of said properties. Therefore, on 1.10.2012 they applied to the Tahasildar for mutating their names. However, by taking undue advantage of their names the defendants are obstructing the possession of plaintiffs. The land Gat no.156 (Old Survey no.44) was allotted to the plaintiff in partition. Nandgaon-Sado to Manvedhe road is passing

from the said property and said property is adjacent to the road. However, the defendants are obstructing the plaintiffs possession over the said property. They are trying to encroach the said property and trying to construct house. They had put construction material on the suit property. On 14.1.2014 when the plaintiff asked the defendants, they threatened them. So also the defendant nos.1 to 7 sold 66 R area of Gat no.373 to defendant no.12 on 29.10.2013. The said sale deed is not binding on the plaintiffs. The plaintiffs are having prima facie case, balance of convenience also lies in their favour. They will cause unnecessary harassment if the defendants are not restrained. Hence, the plaintiffs prayed for allowing the application.

3. The defendant nos.1 to 6 strongly resisted the application by filing his say vide Exh.32. They denied the contents of the application. It is contended in the say that the suit properties are not alone owned and possessed by the plaintiffs. The partition of said properties was taken place between the forefathers of plaintiffs and defendant nos.1 to 7 at the time of gat consolidation scheme. The suit properties bearing Gat nos.84, 156, 138, 148, 219, 222, 315, 348, 367, 370, 373, 503, 506 & 587 came to the share of defendants. Accordingly, their name were mutated in the revenue record. So also the properties bearing Gat nos.86, 174, 182, 308, 316, 350, 352, 487 & 588 came to the plaintiffs in partition. The plaintiffs have suppressed these material facts from the court. The plaintiffs have no concern with these

properties. The plaintiffs have filed false suit in order to harass the defendants. Therefore, they prayed for rejection of the application.

4. The defendant no.7 filed pursis vide Exh.32 and thereby adopted the say and written statement filed by defendnat nos.1 to 6.

5. On the rival submission of both the sides, following point arises for my determination and I have recorded my findings with reasons thereon is as below :-

<u>Points</u>	<u>Findings</u>
1. Whether plaintiffs made out prima-facie case in his favour ?	... In the negative
2. Whether balance of convenience lies in favour of plaintiffs ?	... In the negative
3. Whether irreparable loss will be caused to plaintiffs if temporary injunction is refused ?	... In the negative
4. What order ?	... As per final order.

:: REASONS ::

As to Point nos. 1 to 4 :-

6. Before going to the merit of the case here it is necessary to mention that the application for temporary injunction is filed only against defendant nos.1 to 7. Heard both the counsels for the respective parties. It is the specific case of the plaintiffs that the suit properties mentioned in para.1

of the plaint total 29 properties which are ancestral and joint Hindu family property of plaintiffs and defendants. There was partition between the plaintiffs and defendants as per their convenience and possession was delivered. According to them out of suit properties Gat nos.86, 155, 156, 174, 182, 219, 222, 308, 315, 316, 348, 350, 353, 373, 487, 587 & 588 were allotted to the plaintiff. Accordingly, mutation entry was sanctioned. Therefore, above properties are in possession of plaintiffs. However, some properties which were in possession of plaintiffs were not in their name, therefore they moved application on 1.10.2012 before Tahasildar to enter his name on the basis of mutation entry no.1633.

7. The original owner of the suit property who is the forefather of plaintiffs was died on 27.5.85 and plaintiffs are legal heirs of him. The name of defendants is mutated to some of the properties and by taking disadvantage of this fact they are harassing the plaintiff. The suit property Gat no.156 (Old Survey no.44) was allotted to the plaintiff in the partition. The suit property is near Mangalvedha road, however, the name of defendant nos.1 to 7 are appearing in the 7/12 extract and therefore defendant no.4 with the consent of other defendants tried to enter the said area and tried to construct the house without permission. He has also collected building material on the spot and he is intending to construct the house. When the plaintiff asked them, defendant no.4 threatened and abused them that they

will construct the house and reside there. Therefore, plaintiff has moved application to Tahasildar, police station etc. The Gat no.373 was also sold by defendant nos.1 to 7 to defendant no.12 adm. 66 R. However, the plaintiffs are in possession of suit property. Hence, they prayed for temporary injunction restraining the defendants from constructing the house and disturbing his peaceful possession.

8. The application is strongly resisted by defendant nos.1 to 7. They denied the contents of the application. It is contended by the defendants that the suit property Gat no.156 was never in possession of plaintiffs. There was a partition prior to the Consolidation Scheme and Gat nos. 84, 156, 138, 148, 219, 222, 315, 348, 367, 370, 373, 503, 506 & 587 were in possession of defendants and plaintiff is in possession of Gat nos. 86, 174, 182, 308, 316, 350, 352, 487 & 588. However, he has suppressed this fact from the court and on the basis of that partition they are possessing the suit properties. Though there was mutation entry, but it was nominal one and no effect was given. Therefore, plaintiff has no right for asking injunction. Hence, they prayed for rejection of the application.

9. From perusal of record it appears that the plaintiff has mentioned total 29 properties as suit properties. However, the dispute is related only to the property bearing Gat no.156. It is simple case of the plaintiff that there was partition between the forefather of plaintiffs and

defendants and some of the properties were allotted to him and Gat no.156 was also allotted to him and he is in possession of that property. However, the name of defendants is appearing in that property as a owner and possessor and therefore by taking disadvantage of this fact they are intending to construct the house in that property, they have also collected the material on the said property only to harass the plaintiff.

10. Per contra, this fact was denied by the defendants contending that they are in possession of suit property and their name is appearing in the 7/12 extract. The plaintiff to show that the suit property is in their possession filed some photographs wherein some marking was shown. According to him, in that entry it was specifically held that old Survey no.44 was given to them in partition and therefore the plaintiffs by this mutation entry is claiming to be owner and possessor of the suit property. It is also admitted fact that no effect was taken of that mutation entry till today. First time the application was moved by the plaintiff on 1.10.2012 and requested the Tahasildar to give effect to that mutation entry. This application moved by the plaintiff itself shows that till today the effect was not given to this mutation entry. When the effect was not given to the mutation entry which was of the year 1975, then how it can be said that the plaintiff is in possession of the suit property on the basis of that mutation entry. Primafacie the 7/12 extracts filed by the plaintiffs does not show that they

are in possession of the suit property.

11. It is urged on behalf of plaintiffs that mutation entries are only for fiscal purpose. Though the name of defendants is appearing in the 7/12 extract as a owner and possessor, however, they actually are not possessing the suit property. True, that the mutation entries are only for the fiscal purpose. However, at the same time there is a presumption of correctness of said mutation entries unless contrary is shown. Now here when plaintiff is saying that he is in possession of the suit property, then it is for the plaintiff to show that he is in possession of the suit property Gat no.156. To show that he is only relying on mutation entry, admittedly to which effect was not given. There is no other evidence on record except the 7/12 extract to show the exact position of possession of the suit property and the 7/12 extract shows that nowhere entry of plaintiff is appearing as a owner and possessor of the suit property. Therefore, in my view not a single document is on record to show that plaintiff is in possession of the suit property. Hence, prima facie plaintiff failed to show the possession over the suit property i.e. Gat no.156 (old Survey no.44).

12. On behalf of plaintiff much was argued on the mutation entry no.1633. However, when effect was not given to that mutation entry, then how it can be said that on the basis of that mutation entry the plaintiff is in possession of the suit property. The plaintiff first time has moved an

application for giving effect to that entry in the year 2012. It means that the application is moved by the plaintiff after lapse of more than 25 years and delay on the part of plaintiff to give effect to that mutation entry was not explained by the plaintiff. Therefore, the delay on the part of plaintiff defeats the case of plaintiff and it is not supported to their contention that he is in possession of suit property. Therefore, in my view merely on the basis of mutation entry no.1633 of which effect was not given, it cannot be said that prima facie plaintiff is in possession of the suit property.

13. It is urged on behalf of plaintiff that balance of convenience lies in favour of plaintiff. However, when prima facie plaintiff failed to show his possession, then how it can be said that balance of convenience also lies in his favour. On the contrary, name of defendants is appearing in the 7/12 extract and if injunction is granted, then certainly inconvenience will be caused to the defendants. As per the case of plaintiffs the defendants have collected building material and if injunction is granted, then certainly the building material of defendants will be damaged and unnecessarily they will be prevented from constructing on the suit property Gat no.156. Therefore, in my view no irreparable loss will be caused to the plaintiff as prima facie they failed to show possession over the suit property. Hence, I answer point nos.1 to 3 in negative and in answer to point no.4 I pass following order -

:: ORDER ::

- 1) The application is rejected.
- 2) No order as to costs.

Date : 28.04.2014.

Place: Igatpuri.

(N. A. Patel)

Civil Judge, Jr. Dvn., Igatpuri.