

MHOS120011942025

R.C.S./1050/2025

(Nashik Gopinath Ghode Vs. Shesherao Bhaurao
Ware)**ORDER BELOW EXH.5**

1. Plaintiff have filed present application as per the provisions of Order XXXIX Rule 1, 2 of Code of Civil Procedure for temporary injunction against the defendant, that defendant shall not obstruct the peaceful possession of the plaintiff over the suit property bearing Gut No.385, area 10R, assessment 24 Paise, situated at village Chincholi, Tq. Bhoom, Dist. Osmanabad and having its 4 boundaries- Towards east the land of Sudam Ghode, towards west-road, towards south the land of Ajinath Ghode, towards north Hariba Mali. This is suit property.

2. Plaintiff come with case that, suit property was purchased by father of plaintiff by registered sale deed bearing No.1343/2006 from Digamber Moti Sutar on 30/05/2006. Since then plaintiff and his family is in possession of the suit property. After demise of father of plaintiff, name of the plaintiff got entered to the record of rights of suit property vide mutation entry No.1080. Defendant have no any concern with the suit property. Despite that, he obstructed the possession of plaintiff over suit property on 20/10/2022. Therefore, plaintiff was constrained to file present suit for perpetual injunction. It requires considerable time to decide suit on merit. Therefore, by filing present application plaintiff wants to protect his possession over the suit property by way of obtaining temporary injunction order against the defendant.

3. After service of summons defendant appeared and by filing Written Statement / Say on plaint and Exh.5 at Exh.21, he

denied the suit of plaintiff alongwith temporary injunction application. Defendant come with case that, the contents of plaint and Exh.5 are totally false. Plaintiff have filed present suit on the basis of wrong 4 boundaries of the suit property. Plaintiff have no knowledge about the exact position & 4 boundaries of his property in Gut No.385 situated at Chincholi. Therefore, as plaintiff having no possession over the suit property as alleged in the plaint, plaintiffs suit alongwith application below Exh.5 needs to be rejected. Defendant further contended that plaintiff have not mentioned correct 4 boundaries of the suit property, therefore there is no question of obstruction at the hands of defendant to the peaceful possession of plaintiff over the suit property.

4. Defendant further contended that, there is no cause of action to file present suit and hence he prayed for dismissal of the suit and Exh.5 along with compensatory cost of Rs.10,000/-.

5. Perused record and proceeding. On perusal of record, it is depicted that, long back Exh.5 was heard. Lateron, matter repeatedly adjourned for want of filing of necessary documents on record. Both parties and their Ld. Advocate absent when called out. No any adjournment application filed on record by the parties. Therefore, considering pendency of suit and time passed for order below Exh.5, I taken up the application for order on its our merit, on the basis of pleadings and documentary evidence filed on record.

6. Following points arise for determination of Exh.5. I have recorded reasoned, findings against each of them as below;

Sr. No.	Points	Findings
1.	Whether plaintiff made out Prima Facie case ?	In the Negative
2.	Whether balance of convenience lies in favour of plaintiff ?	In the Negative
3.	Whether plaintiff suffers irreparable loss if Exh.5 is rejected ?	In the Negative
4.	What Order ?	As per the final order.

:-REASONS:-

As To Point No.1 to 3:-

7. As per the contents of the plaint, suit property was purchased by father of plaintiff from Digamber Sutar by registered sale deed on 30/05/2006. The copy of registered sale deed is produced on record at list Exh.20. I have perused the said copy. So far as, the boundary towards south side of the suit property mentioned in plaint and registered sale deed is concerned, it appears that in registered sale deed towards south side of suit property it is mentioned that there is land of Gopinath Ghode while in the plaint it is mentioned that there is land of Ajinath Ghode. Plaintiff come with case that, after demise of father of plaintiff his name was entered to the record of the right of suit property vide mutation entry No.1080. The copy of mutation entry No.1080 produced on record by the plaintiff at list Exh.4/1. On perusal of said entry it is depicted that name of plaintiff entered to the record of right of Gut No.385 and other two Gut numbers by virtue of the relinquishment deed of Sudam Gopinath Ghode, Chaya Ankush Ghode, Vaishali Waghmare, Raghuveerbai Ghode on 25/02/2016. Therefore, it appears that

there is difference in pleading and proof in the theory of the plaintiff. Now, turn towards the Toch Nakasha of suit property i.e. Gut No.385 situated at Chincholi. On perusal of said Toch Nakasha it reflects that towards east there is Gut No.383 which is owned by Vasudev Sable, towards north there is Gut No.384 which is owned by Maruti and Ors., towards east there is Gut No.386 and towards south there is Gut No.382 which is owned by Prabhu. The toch nakasha and 7/12 extract of Gut No.383, 384 & 385 were produced on record by defendant alongwith list Exh.24 at serially No.1 to 4. On combine perusal of document at Exh.24 and 4 and copy of registered sale deed dated 30/05/2006 prima facie it reveals that, the 4 boundaries mentioned in plaint having no consonance with registered sale deed and 4 boundaries of Gut No.385 shown in toch nakasha at Exh.24/1. Therefore, I come to the conclusion that, plaintiff failed to make out prima facie case. Therefore, balance of convenience does not lie in favour of plaintiff. Hence, I answered Point No.1 to 3 negative and in answer for point No.4 I proceed to pass the following order;

:-O R D E R:-

Application stands rejected alongwith cost.

(Dictated and Pronounced in Open Court)

Sd/-

Place : Bhoom.
Date : 15/09/2025

(Smt. P.S.Jadhav)
2nd Jt. Civil Judge Sn. Dn.,
& Addl. C.J.M. Bhoom.