

ORDER BELOW EXH.5 IN R.C.S.NO.50/2012

The plaintiff filed this suit for perpetual injunction and this application for temporary injunction restraining the defendants from obstructing and interfering into peaceful possession and enjoyment of the plaintiff over Survey NO.141/1 , 141/2, 141/3 having area 68 R, 68 R, 69 R respectively i.e. total 2 Hec. 05 R (here-in-after referred to as “suit property”).

2- The plaintiff stated that he has purchased the suit land by registered sale-deed bearing no.2424 dated 16.11.1995 from one Dr.Nagnath Zunjare and since then he is in possession continuously till today. His vendor Nagnath Zunjare had purchased the land from Manchak Bapurao Kirde under registered sale-deeds in the year 1994. The said Manchak Bapurao Kirde had purchased the suit property from the husbands of the present defendants under registered sale-deeds bearing no. 2014 dated 20.04.1987. The boundaries shown in the registered sale-deed dated 16.11.1995 of the plaintiff are identical and similar to the boundaries shown in

registered sale-deed dated 20.04.1987. No land remains of the defendants. The defendants have no concern and possession regarding the suit land. The plaintiff is enjoying the usufructs of the suit property since the date of purchase continuously. The boundaries of the suit property consisting of all the three pot hissa are -

East-	Sahebrao Kadam's land
West-	Hatta – Purna road
South-	River coming from vill Barbadi
North-	1) Manchak 2) Acchut 3) Venkati s/o. Bapurao Kirde and now purchased portion of one Anusayabai w/o. Kaduba Kakade (from them).

The defendants harassed the plaintiff since 2001 to 2010 in the office of T.I.L.R., Tahsildar, Deputy Collector, Parbhani and B. & C., Engineer, Purna for grabbing the suit property. But, the defendants failed in all litigations and after the gap of two years, civil litigation started against the plaintiff in the court. Since 14.03.2012 the defendants out of their common intention and under the grab of order trying to dispossess and to harvest crop in the suit property of the plaintiff. Hence he filed this application.

3- The defendant nos.1 to 3 resisted the application by filing their say at Exh.29. They denied the contents of para no.1 of the application in toto. They stated that they have land 5 Acre 6 guntha out of Survey no.141/4 having area 7 acres 6 guntha. Their land having boundaries east- old Purna-Zero road and thereafter the field of defendant, west- new Purna-Hatta road, south- river and their own land, north- footway and road. The plaintiff has no concern with the field property of the defendants. They denied that the plaintiff has possession over the land as per the boundaries described in the sale-deed of the year 1987. They denied the contents in the application regarding the possession and cultivation of the plaintiff in toto. They also denied the adverse allegations made against them in toto. By specific pleading they stated that they filed RCS No.142/2011 against the present plaintiff and in that suit on 19.03.2012 interim injunction is granted against the present plaintiff restraining him from obstructing their possession over Survey no.141/4 to the extent of 5 Acres 6 guntha till decision of that suit. But, by mentioning false and incorrect boundaries the plaintiff is trying to grab the property of the

defendants by illegally encroaching. Hence his application be rejected with costs.

4- The points for determination along with my findings thereon are as under.

<u>Points</u>	<u>Findings</u>
1)Whether the plaintiff established prima facie case ?	..No
2)Whether the balance of convenience lies in favour of the plaintiff ?	..No
3)Whether the plaintiff will suffer irreparable loss if order of injunction refused ?	..No
4)What order ?	The application is rejected.

REASONS

5- The plaintiff produced certified copy of sale-deed bearing no.2424 dated 16.11.1995, bearing no.2014 dated 20.04.1987. He also produced 7/12 extracts of Gat no.141/1, 141/2, 141/3, 141/4 at Exh.8 to Exh.12 respectively of the year 1995 to 2011. He also produced 7/12 extracts of those properties of the year 2011-

12 along with Exh.4. He also produced certified copy of affidavit of Venkatrao Bapurao Kirde at Exh.15, certified copy of affidavit of Subhadrabai Balaji Kadam at Exh.16, certified copy of list and map at Exh.17. He also produced certified copy of order passed below Exh.5 in RCS No.142/2011 at Exh.22. The defendants produced copy of written statement filed by the present plaintiff in RCS No.142/2011 along with Exh.30. They also produced copy of order passed below Exh.5 in Misc.Civil Appeal No.18/2012 along with Exh.36.

As to Points no.1 to 3.

6- The learned advocate for the plaintiff submitted that the plaintiff purchased the land 68 R out of Survey no.141/1, 68 R out of Survey no.141/2 and 69 R out of Survey no.141/3 totally adm. 2 Hec. 05 R by registered sale-deed dated 16.11.1995 from Dr.Nagnath Zunjare and since then he is having actual and physical possession over the said land continuously till today. He further submitted that Dr.Nagnath Zunjare purchased the said land from Manchak Bapurao Kirde who purchased the said land from the husbands of

the defendants by registered sale-deed bearing no.2014 dated 20.04.1987. He also submitted that the boundaries mentioned in the sale-deed of the plaintiff dated 16.11.1995 are similar and identical as per the sale-deed dated 20.04.1987 bearing no.2014. He submitted that the present defendants have no concern and possession regarding the suit property. He submitted that no land remains that of the defendants as the suit property is already sold out. The defendants harassed the plaintiff since 2001 and they failed in all litigations. After the gap of two years the defendants started litigation against the present plaintiff in the court. Since 14.03.2012 the defendants out of their common intention and under the grab of order of the court trying to dispossess and to harvest the crop in the suit property of the plaintiff. Therefore, the plaintiff filed this application for temporary injunction and the suit for perpetual injunction.

7- The learned advocate for the plaintiff submitted that present defendant no.1 and brother of Manchak Bapurao Kirde filed affidavits in RCS No.142/2011 and admitted that the plaintiff has

purchased the land out of Survey no.141/1, 141/2, and 141/3. The plaintiff filed the certified copies of those affidavits at Exh.15 and Exh.16. The contents of affidavit of Subhadrabai at Exh.16 shows that she stated that the defendant i.e. the present plaintiff is cultivating the land Survey no.141/1, 2 and 3 from eastern side. The learned advocate for the plaintiff relied on Mansharam Mirchumal Sangtani Vs. Dhule Nagar Palika 1994 Mah.L.J. 806. In this case it is held that- an interlocutory injunction should normally be granted to restrain an apprehended or threatened injury where the injury is certain and imminent or where the mischief likely to be done is of an overwhelming nature such as demolition and destruction of property.

8- The learned advocate for the defendants submitted that it is not disputed that the husbands of the defendants sold land out of Survey no.141/1, 141/2 and 141/3 in the year 1987 and the said land was purchased by the present plaintiff in the year 1995. He submitted that there is change in the boundaries of the land purchased by the plaintiff. But, the plaintiff filed this suit by

mentioning old boundaries. He submitted that at-present the boundaries of the suit property described in the plaint are not correct. He submitted that the plaintiff is trying to grab the property of the defendants by taking disadvantage of the boundaries mentioned in the sale-deed by suppressing change in the location of the Purna-Hatta/Zerophata road.

9- The learned advocate for the plaintiff submitted that the husbands of defendants and defendant no.2 sold the property to Manchak Bapurao Kirde by registered sale-deed bearing no.2014 dated 20.04.1984 and no land remains to them. But, no substance is found in this submission because the contents of sale-deed bearing no.2014 dated 20.04.1987 shows that the area of land Survey no.141/1, 141/2 and 141/3 was 23 Acres 28 Guntha i.e. 9 Hec. 59.10 R and out of it the land of eastern side adm. 5 Acre 5 guntha i.e. 2 Hec. 7.4 R was sold. From this sale-deed it is clear that the husbands of defendant and defendant no.2 sold 5 Acres 5 guntha land and 18 Acres and 23 guntha land was remained with them. It also reveals from the sale-deed that the husbands of the defendants

sold the land by that sale-deed of eastern side and the remaining land was on western side.

10- The plaintiff filed certified copy of Exh.5 in RCS No.142/2011 at Exh.24. The contents of this application show that in para no.5 of this application the present defendants pleaded that there was old Purna-Zerophata road on eastern side of their field and after that road there is field of defendant i.e. present plaintiff. They also pleaded that new Purna-Zerophata road was created from their field from western side and their property is on eastern side of said new road. They also pleaded that south-north dhura was created from old Purna-Zerophata road. This pleading shows that the old Purna-Zerophata road was converted into south-north dhura by the plaintiff and defendants. In the sale-deed of the plaintiff dated 16.11.1995 Purna-Hatta road was shown on western side. In the plaint Hatta-Purna road is shown on western side by the present plaintiff.

11- The copy of written statement filed by the present plaintiff in

RCS No.142/2011 which is produced by the present defendants on record along with Exh.30 shows that the present plaintiff pleaded that “in the year 1992-93 the bridge fall down from the right side and 4 to 5 persons dead on account of said bridge fall. Accordingly the B. & C to avoid further consequences have constructed the said bridge within the land of the defendant. Thereafter, on 15.11.1995 this land has been purchased by the defendant as given above. And therefore in the boundaries narrated in the sale-deed bearing no.2424 no bridge is being shown.” This pleading shows that there is some substance in the contention of the present defendants that there was change in the location of the road.

12- If there is creation of new Purna-Zerophata/Hatta road then the boundaries of the property purchased by the plaintiff would be definitely changed. The certified copy of the map produced by the plaintiff at Exh.17 which was prepared by the Talathi shows that the land Survey no.141/4 is between old Purna-Zerophata road and new Purna-Zero road. But, in the present suit the plaintiff is claiming his possession over the property upto the Purna-Zero road

on western side. Considering the change of location of road, it appears that the plaintiff is claiming his western side boundary by extending upto the new Purna-Zero road. The present plaintiff has no right to claim possession over the property situated on western side of old Purna-Zero road. Therefore, it clearly appears that the plaintiff has not correctly described the boundaries of the property more particularly regarding the western side boundary.

13- It is not disputed by the defendants about the ownership of the plaintiff regarding Survey no.141/1, 141/2 and 141/3 to the extent of 2 Hec. 05 R. But, they challenged the boundaries of the suit properties given in the present suit on account of change in the location of Purna-Zero road. Therefore, though the present defendant no.1 and Venkat Bapurao Kirde in their affidavit filed in RCS No.142/2011 admitted the cultivation of the plaintiff over Survey no.141/1, 2 & 3, does not help the plaintiff to prove his possession over the property described in the plaint.

14- The present plaintiff in his plaint in para 6 pleaded as, “ That,

defendants sought the injunction against the plaintiff on 12.03.2012 restraining the plaintiff in their suit referred above and under the order of injunction defendants started harvesting the crop of the plaintiff of Chana and wheat over the suit land forcibly on 14.03.2012. On that the plaintiff even not entering the suit land, but requested them not to interfere and harvest the crop. But, the defendants and their party-men threatened plaintiff and denied the request of the plaintiff at that time. So there being restrained to the plaintiff by the court order”. From this pleading it is clear that the plaintiff lost his possession on 14.03.2012 as the defendants forcibly harvested the crop. It is settled position that the interim injunction is granted in favour of the person who is in possession of the property at the time of filing the suit. But, in the present case the pleading of the plaintiff in plaint in para 6 itself shows that he lost his possession over the suit property. Therefore, he is not entitled for interim injunction to protect his possession over the suit property.

15- Considering the pleading of the plaintiff and the defendants

in the present suit as well as the previous litigation bearing RCS No.142/2011, it appears that both the parties are claiming possession over the same piece of land by describing different boundaries. Already this court has granted injunction regarding the disputed land in favour of present defendants in RCS No.142/2011. Therefore, the injunction again cannot be granted in favour of the present plaintiff against the present defendants regarding the same piece of land though the Survey numbers are mentioned differently by both the parties in both the litigations. Therefore, the plaintiff has no prima facie case. As discussed above the plaintiff has lost his possession over the suit property on 14.03.2012. Therefore, by refusing order of interim injunction no irreparable loss would be caused to him. Also, the balance of convenience does not lie in his favour. Hence, points no.1 to 3 are answered in the negative.

As to Point No.4

16- The plaintiff has failed to establish prima facie case and the balance of convenience does not lie in his favour. The facts of this case show that plaintiff would not suffer an irreparable loss if

the defendants are not restrained from interfering or obstructing his possession over the suit properties. As per the pleading of plaintiff the defendants on 14.03.2012 started harvesting crops of Chana and wheat over the suit land forcibly. The plaintiff has lost possession on 14.03.2012. Therefore it is necessary for the plaintiff to seek the relief of recovery of possession of portion of land forcibly taken by the defendants. But, the present suit is only for relief of declaration and perpetual injunction and not for the recovery of possession. The plaintiff has efficacious remedy to recover the possession of the land which was forcibly taken by the defendants on 14.03.2012. But the said relief was not sought by the plaintiff. Hence the plaintiff is not entitled for temporary injunction in view of provisions of Section 41(h) of Specific Relief Act.

17- The relief of temporary injunction is a discretionary relief. The plaintiff should not have suppressed the material facts from the court in respect of change of location of the Purna-Zerophata/Hatta road and boundaries of western side while seeking the equitable relief of injunction. This

fact also would not entitled the plaintiff to seek the equitable relief of temporary injunction. Considering all these facts, it appears that plaintiff's application is not liable to allowed. In the result, in answer to point no.4 the following order is passed.

ORDER

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

Purna
Dated:25/07/2012.

(Vishwas S. Mane)
Civil Judge Junior Divn.,
Purna.