

ORDER BELOW EXH.93
(Passed on 02/02/2018)

1. This is an application under order 39 Rule 1 and 2 of the Civil Procedure Code for grant of temporary injunction preferred by defendant nos. 5 and 6 to restrain plaintiff and defendant no.1 to 4 from obstructing their possession over the suit property till the final disposal of the suit.

2. **The factual matrix of defendant no.5 and 6 case runs as under:**

It is submitted that Gat no. 310 admeasuring .69 R is included by the plaintiff as the suit property. After the Consolidation Scheme, Gat No. 310 is constituted by land bearing S.No.64/2 admeasuring 0H.44R and land bearing S.No.64/3 admeasuring 0H.25R. It is the contention of defendant nos.5 and 6 that out of the Gat No.310 S.No.64/3 admeasuring 0H.25R situated at Mouje Shindewadi, Tal-Bhor, Dist. Pune is owned by them and their deceased father and since 1970 they are in uninterrupted possession of the same. It is submitted by defendant nos.5 and 6 that the said property was purchased by their deceased father Baban Yesu Shinde from deceased Genu Ganpati Shinde on 16/11/1970. It is the contention of defendant nos.5 and 6 that the suit property i.e. S.No.64/3 admeasuring 0H.25R situated at Mouje Shindewadi, Tal- Bhor, Dist. Pune is owned by them and their deceased father and since 1970 they are in uninterrupted possession of the same. It is submitted by defendant nos.5 and 6 that the said property was purchased by their deceased father Baban Yesu Shinde from deceased Genu Ganpati Shinde on 16/11/1970. It is further contended that in 1977 at the time of consolidation scheme the instant suit property was recorded

in the name of defendant no.1 Sakharam Sadhu Shinde and land bearing S. No.50/4B admeasuring 11.8R was allotted to defendant no.5 and 6 bearing Gat No.188. But the said Consolidation of holding Scheme was remained on paper only as defendant no. 5 and 6 are still in possession of S. No.64/3. Being aware of the said fact, the plaintiff has included the said suit property in the plaint and prayed for partition and therefore there is apprehension that the plaintiff and defendant no.1 to 4 will make the partition of the suit property among themselves.

3. It is submitted by the defendant no.5 and 6 that they have asked plaintiff and defendant nos.1 to 4 for the correction in the name over the suit property but they avoided for the same. It is alleged that the defendant no.5 and 6 are owner of the suit property and is in lawful and peaceful possession of the suit property till today and the plaintiff and defendant no.1 to 4 have never obstructed them from their possession. But if the partition took place between the plaintiff and defendant nos.1 to 4, there will be irreparable loss. Hence, the relief is claimed for restraining the plaintiff and defendant nos. 1 to 4 from obstructing their possession over the suit property till the final disposal of the case.

4. The plaintiff resisted and vehemently opposed the instant application by filing reply at Exh.105. It is contended that the suit property Gat no. 310 was allotted to the plaintiff and defendant nos. 1 to 4 during the consolidation from the ancestors of defendant no. 5 and 6. Till today defendant no.5 and 6 have not challenged that allotment scheme therefore, the application is not maintainable and prayed for rejection.

5. Defendant no.1 to 4 contented by filing their say at Exh.96 that under the Consolidation scheme, their property bearing Gat no.188 (S.No.50/4B) admeasuring 11.8 R was allotted to the defendant no.5 and 6 in return of S No. 64/3 admeasuring 0H.25R. Since then defendant no.5 and 6 are in possession of Gat No.188. It is further submitted that defendant no.5 and 6 are suppressing material facts and did not come before the court with clean hands. Hence, prayed for rejection of the application.

6. It is admitted that in 1977 under the consolidation scheme the property bearing S.No.64/3 admeasuring .25R was allotted to the plaintiff and defendant no.1 to 4 by the consolidation officer.

7. In view of the rival contentions of parties, the following points arose for my consideration, and I, record my findings thereon for the reasons thereto are as under:

POINTS FOR DETERMINATION

Sr. No.	Points	Findings
1.	Do defendant nos. 5 and 6 prove the prima facie case in their favor?	No
2.	In whose favor the balance of convenience lies?	Plaintiff and defendant no.1 to 4
3.	Whether defendant nos. 5 and 6 would be put to irreparable loss, if injunction is not granted?	No
4.	What order?	As per final order

REASONS

8. Heard the ld. counsel for plaintiff and ld. counsel for defendant no.1 to 4 and defendant nos. 5 and 6 and ld. counsel for defendant no. 1Bto 1D and 4(2).

AS TO POINT No.1 to 4:

9. As point nos.1 to 4 are inter linked with each other, I prefer to discuss it under one common caption. Ld. Counsel for defendant nos.5 and 6 submitted in consonance to their counter claim and application. In order to substantiate his submissions Ld. Counsel for defendant nos.5 and 6 invited my attention towards documents filed on record. He submitted through his application that, prima facie case and balance of convenience lies in favor of defendant no.5 and 6 and irreparable loss would be caused to the defendant no.5 and 6 which could not be compensated in terms of money and accordingly prayed to allow the instant application.

10. Per Contra Ld. Counsel for plaintiff and defendant nos. 1 to 4 submitted that defendant nos. 5 and 6 have filed instant application with ulterior motive and the counter claim of the defendant nos. 5 and 6 is not tenable. Ld. Counsel for plaintiff and defendant nos. 1 to 4 submitted in consonance to his reply at Exh.105 and 96. In order to substantiate his submissions, they invited my attention towards documents to show their bonafides and also submitted that documents filed by defendant nos. 5 and 6 are not reliable at this juncture.

11. Meanwhile defendant no.1 and 4 died. Ld. advocate for LR's i.e. defendant 1B to 1D and defendant no.4(2) submitted that defendant no. 5 and 6 are in possession with the instant suit property. But to support their argument they did not file any document on record.

12. It is canon of settled legal principle that power to grant injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this

relief as the matter of right or course. The grant of injunction is at the discretion and must be exercised in favor of the party only if the Court is satisfied that, unless the other party is restrained by an order of injunction, irreparable loss or damage would be caused to that party. The court grants such relief on the principle of *ex debito justitiae* i.e. to meet the ends of justice.

13. Reverting back to the hub of the matter, as per the case of the defendant no.5 and 6 that the suit property is their ancestral property and there is apprehension that by making the partition of the suit property, the plaintiff and defendant no.1 to 4 will obstruct the possession of the defendant no.5 and 6 over the suit property.

14. From the perusal of the application it reveals that it is not the case of the defendant no.5 and 6 that plaintiff and defendant nos. 1 to 4 are obstructing their possession over the suit property. As it is contended by the defendant no.5 and 6 that they are in peaceful possession of the suit property and plaintiff and defendant no.1 to 4 have never obstructed them from their possession. It is the case of defendant no. 5 and 6 that as the plaintiff has included the instant suit property in the plaint and asked for the partition, the plaintiff and defendant nos.1 to 4 will partition the suit property among them and thereby irreparable loss will cause to the defendant no.5 and 6.

15. The factum of ownership and possession over the suit property is the real bone of contention between parties inter se in dispute. On the perusal of the documents filed by the defendant no.5 and 6 vide Exh.87; it seems that in 2015 they have filed the application before Tahsildar, Bhor for recording their names as the possessor of the suit property. They have also filed the certified copy of panchnama prepared by Talathi and statements of adjacent landowners recorded

during the proceeding before Tahsildar to show that they are in possession of the suit property. Though, the defendant no.5 and 6 have filed statements of adjacent landowners to show that they are in possession of the suit property, these statements were recorded in the proceeding before the Tahsildar. These adjacent land owners did not file any affidavit in that regard before the court. Per contra, the certificate issued by the consolidation officer regarding the allotment filed vide Exh.84 shows that S.No.64/3 admeasuring 0H.25R was allotted to defendant no.1 Sitaram Shinde and defendant no.4 Balu Shinde in 1977. Further, the Scheme Extract of Allotment shows that S.No.64/3 admeasuring 0H.25R was allotted to defendant no.1 Sitaram Shinde and defendant no.4 Balu Shinde. Further, the 7/12 extracts of Gat No.310 filed by the plaintiff shows that name of plaintiff and defendant no.1 to 4 were recorded in the same. Theses 7/12 extracts are showing the cultivating possession of the plaintiff and defendant no.1 to 4 over the suit property.

16. So far as photographs are concerned is indeed not sufficient to hold that defendant no.5 and 6 are prima facie appears to be in the possession of the suit property

17. To substantiate his submission, defendant no.5 and 6 have relied upon the following case laws:

- a) Namdeo Vs.Shantabai [2011 (4) Mh.LJ 207]
- b) Dattu Yadav vs. Dnyaneshawr Yadav [2012 (6) BOM. C.R. 704]
- c) Juggi Lal Kamal Pal Vs. Ram Janki Gupta [AIR 1962 Allah.407]
- d) Raja Himanshu Dharsingh vs. Addl. Reg. Co. Op. Societies UP, Lucknow and Ors. [AIR 1962 Allh.439]
- e) Indo Allied Industries Lt. Vs. Punjab National Bank [AIR 1970 Allh.108]

- f) Subhash Chandra Das Mushib Vs. Ganga Prasad Mushib and Ors.
- g) S.P. Changalvaraya Naidu Vs. Jagunnath [AIR 1994 SC583]
- h) Ashok Yashwant Dhumal Vs. Shankar Maruti Dhumal [2001 (3) BCR 27]

18. I have gone through the above cited case laws. On the perusal of the above case law, in my humble view the facts of the alleged case and case before me are totally different hence, it will not much helpful to the defendant no.5 and 6.

19. The defendant no.5 and 6 relied upon panchnama of possession regarding the suit property. However, the 7/12 extracts filed by the plaintiffs are latest and show their cultivating possession. It is pertinent to note here that both the rival parties have relied upon documents to show their ownership and possession over the suit property. The documents filed by plaintiff and defendant no.1 to 4 shows that the ownership is vested on the plaintiffs by way of Consolidation certificate. Upon weighing the documents, I am of the view that the claim of the plaintiff and defendant no.1 to 4 stands on a much higher footing than that of the defendant no. 5 and 6.

20. Another important aspect which needs to be discussed here is that, the plaintiffs have come up in possession with suit property by way of consolidation certificate, on the contrary, the defendants claimed to be in possession since year 1970. The defendant no. 5 and 6 were at liberty to show their possession over the suit property, however, they have failed to do so. It is not the case of the defendant no.5 and 6 that they came to know about the consolidation scheme certificate in 2015. In spite of having knowledge about the consolidation scheme certificate, till 2015 defendant no.5 and 6 have not taken any action against that order of consolidation officer.

21. In my view, the stand taken by plaintiff and defendant no. 1 to 4 is bonafide and the documents filed by them speak volumes about their ownership and possession. The documents filed by the defendant no.5 and 6 cannot be considered at this juncture. The factum of possession and ownership with regards to story put forward by defendant no.5 and 6 appears to be moonshine. On perusal of instant application, the cause of action for filing the instant application itself seems to be missing. Therefore, I am of the view that defendant no.5 and 6 have failed to make out prima facie case in their favor.

22. The facts alleged by both sides in dispute can be adjudicated by adducing evidence by both sides. It seems from record that defendant no.5 and 6 have suppressed material facts from this court which they know. It is pertinent to mention here that the pleadings of rival sides are counter blast to each other and needs to be adjudicated by framing issues and by leading evidence by parties inter se in dispute.

23 In the present matter, it transpires from the documents on record that plaintiff and defendant no.1 to 4 are in possession of the suit property and if the injunction granted in favor of defendant no.5 and 6, irreparable loss will cause to plaintiff and defendant no.1 to 4. As of now, the defendant no.5 and 6 failed to show their prima facie case and granting injunction would result into greater hardship to the plaintiff and defendant no.1 to 4 as compared to defendant no.5 and 6. In the result, I am inclined to pass the following order:

ORDER

1. The application at Exh.93 hereby stands rejected.
2. Parties to bear their own cost.

Sd/-

Date: 02/02/2018

(Ms. A.C. Rokade)
Jt. CJJD, Bhore, Dist. Pune

"I affirm that the contents of this P.D.F file Order are same word for word as per original Order.

Name of the Clerk : G.S Mhavale.

Court Name : Smt. A.C.Rokade

Jt.C.J.J.D, Bhor, Dist. Pune.

Date :02/02/2018

Order signed by presiding officer on : 02/02/2018

Order uploaded on :03/02/2018."