



ORDER BELOW EXH.5A
(Passed on 12/03/2021)

1. This is an application under order 39 Rule 1 and 2 of the Civil Procedure Code for grant of temporary injunction preferred by plaintiffs against defendant to restrain him from causing obstruction to the possession of the plaintiff over the suit property till final disposal of the suit.

2. The factual matrix of plaintiffs case runs as under:

It is the contention of plaintiff that suit property Gat no.382 bearing old Gat No.795 i.e. old survey no.190/5 admeasuring 1 H 46 R situated at village Taparewadi Tal.Bhor Dist.Pune. (more specifically described in para 1st of the plaint). Originally the suit property was owned by the person namely Govind Pandurang Deshpande. Thereafter the plaintiff's uncle namely Jagannath Genu Tapare had been cultivating the suit property prior to the year 1950. Further his name was recorded into the revenue records as owner since 1950 and no one has challenged it. After the consolidation scheme in the village the name of Jagannath Tapare was confirmed as owner of suit property.

3. The plaintiff's father and his uncle had a joint family. During the partition between them Gat No.795 (present Gat No.382) and Gat No.919 were allotted to the plaintiff's family whereas Gat No.798 and 947 were allotted to Jagannath Tapare. This partition was effected and mutation certificate no. 695 came to be registered. Since the plaintiff has been in possession of suit property and defendant has no concern therewith. In this situation defendants are causing obstruction to the possession of the plaintiff. On 02/06/2020

the defendant entered on the suit property and gave a threat to the plaintiff by using abusive language. Thereat the plaintiff filed complaint to the Rajgad Police Station but Police directed him to file Civil Suit against the defendant. Hence the plaintiff filed a present suit and application.

4. The defendant has filed his say to the present application at Exh.14 and his written statement at Exh.19. It is the contention of the defendant that the plaintiff has filed suit for injunction without claiming Declaration therefore the present suit is not tenable. He further contended that the suit is bad for non-joinder of necessary parties. The defendant contended that RCS No. 67/2014 is pending between the plaintiff and defendant. Despite, the plaintiff has filed the present suit by suppressing this fact from the Court. The defendant never caused any obstruction neither he threatens the plaintiff.

5. The defendant submitted that the present Gat No.382 was previously Survey No.190/2. The deceased Nana Pandu Tapare and Genu Pandu Tapare were the protected tenants in the suit property. This both brothers were cultivating in the suit property and after their demise their heirs are cultivating in the suit property. The defendant has filed lineage chart of Nana Tapare and Genu Tapare Therefore the plaintiffs falsely stating that prior to year 1950 Jagannath Tapare was cultivating in the suit property. The suit property was obtained by Nana and Genu under tenancy and therefore their heirs are the owners of the suit property. Jagannath Tapare was elder in their next generation and therefore his name was entered on 7/12 extract.

6. In the year 2012 defendant applied to Tehsil office to mutate his name on land records of suit property. thereat plaintiff's father Tukaram Genba Tapare admitted that the plaintiff and defendant both have share in the suit property. Therefore the plaintiff is not the sole owner of the suit property. As the defendant is the co-owner of the suit property. The plaintiff cannot claim injunction against him. Hence he prayed for rejection of the present application.

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

POINTS FOR DETERMINATION

Sr. No.	Points	Findings
1)	Whether the plaintiff has made out prima-facie case in his favor?	Yes
2)	Whether balance of convenience lies in favour of the plaintiff?	Yes
3)	Whether the plaintiff will suffer irreparable injury if the injunction is not granted?	Yes
4)	What order?	As per final order

REASONS

8. Heard the ld. Counsel for plaintiff Shri.T.R. Deshmukh and ld. Counsel for defendant Shri. V.V. Mukadam. Perused documents on record.

As to point no. 1

9. The plaintiff through this application prayed for Temporary Injunction against the defendant. The defendant in his

written statement raised objection that the present suit is not maintainable and it is barred by the principle of non-joinder of necessary parties. At this stage it would not be appropriate to decide the present issues in the matter.

10. The ld. Advocate for the plaintiff submitted that the plaintiff is cultivating the suit property as an owner and the defendant is trying to obstruct possession of the plaintiff. He further submitted that Since the 1950 his Uncle had been cultivating the suit property. His name was entered into the records of the land as a owner. Thereafter during the partition between his father and Uncle, previous Gat no. 795 i.e. suit property allotted to the plaintiff. Accordingly mutation certificate no.695 has been effected. Since the plaintiff has been in possession of the suit property.

11. On the contrary the Ld. Advocate for the defendant submitted that Nana and Genu Tapare were brothers. They both were tenants in the suit property. Nana was cultivating in Northern side whereas Genu was cultivating in a southern side. During their lifetime they both were cultivating the suit property and after their demise their heirs i.e. plaintiff and defendant are cultivating the suit property. The defendant submitted that the plaintiff falsely pleaded that he alone is cultivating the suit property. According to the defendant he is co-owner in the suit property and he also has possession over the suit property.

12. The defendant has filed pursis at Exh.21 wherein he admitted that Gat No. 382 is created from old Survey No.190/5. In the pursis he further stated that in say given by the defendant to the present application, Survey No.190/2 was wrongly mentioned and it

can be read as Survey no.190/5. In this situation, considering the entire documents filed by the defendant i.e. extract & plaint in R.C.S No.67/2014 it appears that the defendant, since beginning, claiming that Gat No.382 is created from Survey No. 190/2. Further the defendant has not taken aid of amendment. Therefore the pursis filed by the defendant can not be consider at this stage of the suit.

13. Considering the rival contentions of the parties now it become necessary to take aid of the documents filed on the record. The plaintiff has filed documents in support of his averments alongwith Exh.3. it is admitted by both parties that Gat No.382 is created from Survey no.190/5. On perusal of the chart of consolidation scheme it is palpable that Jagannath Genba Tapare was confirmed as owner of Gat no.795 i.e. old Survey no.190/5. Gatwari chart of village Taparewadi reveals that Gat 795 was renumbered as Gat No.382. The 7/12 extract of Gat no.382 and Village extract 8A dated 26th April 2016 stands in the name of Tukaram Tapare. Whereas 7/12 extract of Gat no. 382 dated 16/06/2019 stands in the name of plaintiff and his brothers.

14. Further the Mutation certificate No. 695 dated 05/03/1984 prima facie reveals that during the partition Gat no.795 has allotted to the plaintiff's father. An old 7/12 extract of Survey No.190/5 indicates that in view of mutation certificate no. 2851 dated 19/06/1960 name of Jagannath Tapare was entered as holder of the property. Whereas in view of mutation certificate no. 3108 and 3109 name of Jagannath Tapare and Narayan Tapare was deleted from other rights on the extract. The mutation Certificate no. 2851 filed by the plaintiff is not visible to read and understand. In mutation Certificate No.3108, it is mentioned that the name

Jagannath Tapare is deleted from other rights of Survey No. 190/5 as he is cultivating the suit property as an owner. In Mutation Certificate 3109 it is mentioned that on 02/01/1996, the name of Narayan Tapare, a tenant of Jagannath Tapare is deleted from the Survey No. 190/5 as since 1953-54 he has not been cultivating therein. The Ld. Advocate for the plaintiff submitted that all documents on record supports the averments of the plaintiff. The entries in revenue records has not been challenged by anyone till today. Therefore on the basis of revenue records it is crystal clear that it is the plaintiff who has possession over the suit property.

15. On the other hand the defendants has filed documents in support of his contention at Exh.17. The defendant has filed 7/12 extracts of Survey No.191/5, Survey No.190/2, Survey No.219, Survey 218/2 and survey No.219/4 during the period of year 1949-1959. These all extracts shows the name of Jagannath Genu Tapare and Narayan Nathu Tapare were deleted from the column of other rights. Moreover, the extract of Survey no.191/5, Survey No.219, Survey 218/2 and Survey No.219/4 indicates the name Jagannath Tapare as holder of the property. Whereas the extract of Survey No.190/2 indicates the names of both Jagannath Tapare and Narayan Tapare as holder.

16. Further, on perusal of the mutation certificate no.1821 and 1824 of year 1949 it is palpable that Genu Tapare And Nana Tapare became owner owner of Survey No.190/5, Survey No.190/2, Survey No.219/5, Survey 218/2 and Survey No.219/4. The mutation certificate No. 3731 [Exh.17, Sr.No.8] reveals that on 15/09/1967 the name of Jagannath Tapare as tenant was deleted from the other rights of the above mentioned properties. The defendant has filed

application send by him to the sub-inspector Kikwi Police Station wherein he stated that the plaintiff has filed wrong complaint against him and he has not abused the plaintiff. The ld. Advocate for the defendant argued that documents produced by him are in support of his contentions and therefore on the basis of these documents it is very much clear that defendant also have interest in the suit property and he has been in possession of the suit property as co-owner.

17. Considering the documents on record prima facie it appears that Nana & Genu were tenants in suit property and became owner of the suit property. Thereafter, during consolidation scheme the Jagannath Tapare was confirmed as owner of Survey No.190/5 i.e. Gat No.795. After that in the year 1984, Gat No.795 was allotted to the plaintiff in a partition.

18. The defendant further submitted that in the year 2012 he applied to Tehsil Office to enter name of his family in the record of rights. In that proceeding the Circle Officer has intimated to the Tehsildar that the present defendant has half share in the property and take entries in the record accordingly.

19. The defendant has filed document in support of his contentions at Exh.17. In the Report of Circle Officer sent to the Tehsildar – Bhor it is mentioned that Jagannath Tapare and Narayan Tapare were tenants in Survey No. 190/2 and both were cultivating the same. Therefore there is no objection to take an entry of Narayan Tapare to the records of Gat No. 382. On perusal of the statement of Tukaram Genba Tapare it appears that he has stated therein that the Gat No. 382 was received by the Jagannath Tapare and Narayan Tapare under Tenancy. In the Survey No. 190/2 both have equal

share but the name of Narayan Tapare was deleted from the records and he is ready to give the share of Narayan Tapare. Further In the panchnama of Circle Officer it is stated that the defendant has possession in the Gat No.382 and Tukaram Genba Tapare has no objection to enter his name into the records of right.

20. The ld. Advocate for the defendant submitted that the father of the plaintiff himself admitted a share of defendant in the suit property, then the plaintiff can not claim against his fathers statement as there is bar of rule of Estoppel. On the contrary the plaintiff submitted that the statement filed by the defendant was never given by his father. Moreover considering the age of his father on relevant time it could not be possible for him to give such statement. The defendant has filed false statement and it is not binding on the plaintiff. Now whether the said statement was given by Tukaram Tapare or not is matter of evidence and it can not be decided at this stage.

21. Considering the documents brought on record by both parties it appears that the plaintiff claiming his possession on the basis of entries in the revenue records whereas the defendant claiming his possession on the basis of proceeding before revenue authority. Here it is necessary to note that the entries in the revenue records are always prevailing over the proceeding before revenue authority. The circle officer sent his report to the Tehsildar - Bhore on 26/04/2012. In this regard the plaintiff relied upon the decision of **Hon'ble Bombay High Court in the case of Shrikant R Sankanwar & Ors. v. Krishna Balu Naukudkar 2003 (3) Bom. C.R. 45.** Wherein it is held that Revenue Authority has to be restricted to matters pertaining to mutation of entries and cannot adjudicate

upon rights acquired in respect of which mutation of entry is requested for. This decision of Hon'ble High Court is applicable to the present matter.

22. The plaintiff has filed latest extracts of the suit property which yet shows the name of plaintiff thereon. On the other hand documents filed by the defendant are not helpful to show his possession over the suit property. The defendant has filed photographs of the suit property but that is not enough to conclude that defendant is in possession of the suit property.

23. The ld. Advocate for the plaintiff submitted that during the Consolidation Scheme Jagannath Tapare was confirmed as owner of Survey No.190/5 and the defendant has no right to deny the right of the plaintiff over the suit property. The plaintiff had relied upon the judgment of the Hon'ble Bombay High Court in the case of **Gunda Tuka Shinde by his heirs Bajirao Tukaram Shinde v. Pandharinath Ramrao Shinde 1991 (1) MHLJ669**. Wherein it is held that when the parties had chosen the blocks with the open eyes and taken into account various relevant factors pertaining to their land coming to their share, there was no question either of any error or irregularity or infirmity.

24. The plaintiff has filed copy of statement before assistant consolidation officer, Pune. On perusal it appears that the said statement is not relating to suit property. The plaintiff has filed chart of Consolidation Scheme of property belonging to plaintiff and defendant. The Charts of Consolidation Schemes shows that the name of Jagannath Tapare as owner of Survey No.105 and confirmed as owner of Gat no.795. Whereas Consolidation Scheme Chart in the name of Narayan Nanba Tapare does not shows that he

is owner of Survey No.190/5. Here it is necessary to note that at this stage it would not be appropriate to decide who is the owner of property. As Temporary Injunction is possessory relief at this stage what matter is a possession.

25. So far as possession is concerned the defendant raised objection that the plaintiff has not filed receipt of possession or transfer certificate. In this regard the plaintiff relied upon the decision of Hon'ble Bombay High Court in the case of **Prabhakar Hagvane v. Yashwant Hagvane 1993 MHLJ1291**. Wherein it is held that scheme u/s. 20 of the Act is complete as soon as possession is delivered, issuance of transfer certificate was matter of procedure. Further, vesting of title in consolidation of holdings did not depend upon grant of certificate of transfer. Considering this decision of Hon'ble High Court it can be said that objection raised by the defendant is not tenable.

26. According to plaintiff he is become owner of suit property by virtue of partition between his father and Jagannath Tapare. On the other hand the defendant contended that the plaintiff has not filed transfer deed of suit property. In this regard the plaintiff relied upon the judgment of Hon'ble Bombay High Court in the case of **Arvind Yashwantrao Deshpande v. State of Maharashtra and Ors. 2004 (2) Bom. C.R. 331**. Wherein it is held that property received by coparcener in partition of Joint Hindu Family Property is not transfer and therefore registration of transfer deed is not necessary. Relying upon this decision it can be said that objection raised by the defendant remains in vein.

27. The revenue records filed by the plaintiff i.e. mutation certificate No.695, 3108 and 3109, 7/12 extracts and 8A extract of

suit property stands in the name of plaintiff. Therefore, relying upon them prima facie it can be said that the plaintiff is having possession over the suit property. On the contrary the defendant contended that the entries in the revenue records i.e. mutation certificate no.3107 and 3108 came into existence behind his back and those are false. In this situation here it is necessary to take aid of section 157 of the Maharashtra Land Revenue Code, which is as follows.

“An entry in the in the records of rights and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefore.”

28. In view of this provision, at this stage, the defendant has not brought on record any contrary or substitution to the 7/12 extracts and mutation certificate filed by the plaintiff. Therefore at this stage documents filed by plaintiff can be presumed to be true. It is well settled that revenue records neither creates nor extinguishes the right of the party in the property. But here it is to be noted that though the 7/12 extract is not a proof of ownership, it is a primary proof of possession, in view of sec107 of Maharashtra Land Revenue Code 1966. Therefore considering 7/12 extracts, 8A extract and mutation certificate prima facie it can be said that the plaintiff has been in possession of the suit property.

29. The ld. Advocate for the plaintiff argued that the plaintiff has peaceful possession in the suit property despite the plaintiff is causing obstruction thereof. He further submitted that on 01/07/2020 defendant entered into the suit property and used abusive language to the plaintiff. The plaintiff filed complaint to the Rajgad Police Station against the defendant on 04/07/2020. In

support of the argument the plaintiff has filed complaint dated 04/07/2020 which shows that the defendant used abusive language to the person Vasant Tapare who is cultivating in the suit property for the plaintiff. Here it is necessary to note that the plaintiff has prima facie prove his possession over the suit property. The defendant is claiming his right over the property which itself caused obstruction to the right of the plaintiff in the suit property. Moreover, the plaintiff on affidavit stated that the defendant is causing obstruction to his peaceful possession over the suit property. At this stage this is sufficient to conclude that defendant is causing obstruction to the plaintiff.

30. In order to get relief of injunction the plaintiff has to prove prima facie case against the defendant. Prima facie means there exist bonafide dispute between the parties and which could be adjudicated by conducting trial only. In the present after considering entire record, at this stage it appear that the plaintiff has possession over the suit property and defendant causing obstruction thereon. Therefore, it can be said that here exist bonafide dispute between the parties. Hence it can be conclude that the plaintiff has prima facie case against the defendant. Resultantly, I answer point no.1 in affirmative.

As to point No.2 and 3:

31. So far as question relating to irreparable loss is concerned it is well settled that irreparable loss means an injury which cannot be adequately compensated in terms of money. In the present matter the plaintiff prima facie shown that he has been in possession of the suit property and the defendant is causing obstruction thereof. The plaintiff has right to enjoy peaceful

possession of the suit property and if defendant causing obstruction thereof, it will infringement of right of plaintiff which can not be adequately compensated in terms of money. Therefore if relief of temporary injunction is not granted the plaintiff will suffer irreparable loss. On the contrary defendant will suffer no loss if Injunction granted

32. So far as balance of inconvenience is concerned it is relating to need of parties. The plaintiff submitted that the defendant frequently causing obstruction to his possession over the suit property. In this situation if injunction is not granted it will definitely cause inconvenience to the plaintiff. Therefore it can be said that it is the plaintiff who is in need of relief of injunction and therefore balance of inconvenience lies in his favour. Resultantly, I answer point no.2 & 3 in affirmative.

As to Point No.4:-

33. The plaintiff prayed to restrain the defendant from causing obstruction to the possession of the plaintiff. On the other hand defendant submitted that he is co-owner in the suit property and therefore injunction cannot be granted against him. In this regard it is pertinent to note that the defendant has not brought on record any document to show that he is a co-owner in the suit property. Therefore, the defendant cannot be considered as a co-owner in the suit property.

34. The defendant submitted that he has filed previous suit against the defendant in Civil Court, Bhore and said suit is still pending. The defendant filed that suit for relief of Declaration and Injunction. Wherein Tukaram Genba Tapare is defendant no.1. In

this situation the plaintiff filed the present suit by suppressing the fact about the pendency of previous suit. As the plaintiff has suppressed material fact before the Court, he is not entitled to relief of Injunction. Here it is necessary to mention that in RCS No.67/2014 the plaintiff himself is not a party and therefore it cannot be said that he has suppressed material fact before the Court.

35. In order to get relief of temporary injunction, the plaintiff has proved prima facie case against the defendant, irreparable loss to him and balance of inconvenience in his favour. According to O-XXXIX, R-1(3) if defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to suit property the court may grant a temporary injunction. Therefore considering the facts and circumstance of the suit and reasons mentioned above it can be concluded that the plaintiff is entitled to relief of temporary injunction. Hence in answer to point no.4, I pass following order:

ORDER

- 1) The application at Exh.5 is allowed.
- 2) The Defendant, his servants, agents or anybody claiming through them are hereby temporarily restrained from causing obstruction to the possession of plaintiff over the suit property till the conclusion of the suit.

(Dictated and pronounced in open Court)

Date: 12/03/2021

(H.U.U.Patil)
2nd Jt. CJJD, Bhor, Dist. Pune

Certificate

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

Name of the Steno : A.A. Shaikh.

Court Name : Smt. H.U.U. Patil.

J.M.F.C., Bhore, Dist. Pune.

Date :12/03/2021

Judgment signed by presiding officer on :12/03/2021

Judgment uploaded on : 15/03/2021.”