

ORDER BELOW EXHIBIT-5 IN
R.C.S.NO.188/2013

This is an application filed by plaintiff for grant of temporary injunction under O-39 R1 and 2 of C. P. C.

[2] Plaintiff submitted that 0H-94 R in G.No.146 and 1H-54R in G.No.148 of village Kenjal Tq. Bhor is subject matter of the suit. Suit property is of ancestral ownership and possession of plaintiffs family. Apart from the family members of plaintiff, nobody has any concern with it. Consolidation scheme was effected at village in 1975-76 at village. After consolidation, name of main person of family of plaintiff i.e Dhondiba Hari Bathe was recorded in respect of suit property. After death of Dhondiba Hari Bathe, all heirs alongwith plaintiff have been registered as per mutation no.299. Defendants no.1 to 6 have no concern with suit property and family of plaintiff. Apart from suit property, partition between plaintiff and defts.no.7 to 12 has taken place in respect to other ancestral fields. Names of plaintiff and defts.no.7 to 12 have been deleted in respect to suit property and it was decided that after amended 7x12 extract partition of suit property will be effected. Therefore partition of suit property could not take place.

[3] Plaintiff further submitted that defendants have no concern with suit property. When plaintiff came to know about names of defendants on 7x12 extract, it became clear from

mutation no.509 that only on one application, names of defendants have been recorded on 7x12 extract. On making further enquiry, plaintiff came to know that in 1987 at village Kikvi Tq.Bhor, nephew of deft.no.1 i.e. Shri. Zende was acting as Gaonkamgar Talathi and in collusion with him, defendants have deleted the names of plaintiff and prepared false documents. Mutation No.509 is void ab-initio. Defendants did not get any legal right because of this entry. Taking advantage of this entry, defendants applied for loan from Bhu Vikas Bank and sold suit property to defts.no.13 to 41 by registered sale-deeds. Defendants no.13 to 41 do not get any right on the basis of bogus and illegal sale-deeds. Defendants did not make enquiry with the ownership of defts.no.1 to 6 in suit property. Therefore sale-deeds executed by defendants in their favour are not binding on plaintiff. Defendant no.13 to 41 have made encroachment and constructed houses illegally in suit property. Therefore demolishing all these constructions, vacant possession of suit property is required to be given to the plaintiff.

[4] Plaintiff further submitted that on 29/7/2013 plaintiff brought into notice of defts.no.1 to 6 and 13 to 41 about wrong entry in revenue record and tried to give them understanding. But deft.no.1 to 6 threatened plaintiff to kill and told that their nephew is Talathi and he can do whatever he wants and plaintiff cannot do anything against them. Defendants also threatened that they will sell remaining fields as they sold G.No.146. Brother of deft.no.1 i.e. Tukaram died on 17/8/2013.

On 16/8/2013 plaintiff again tried to give understanding to defendants through respected persons of the village but defendants did not pay any heed. Defendants do not abide by the law. Therefore plaintiff is constrained to file instant suit otherwise he will have to suffer irreparable loss. In order to protect the right of plaintiff, defts.no.1 to 6 are required to be restrained. If injunction is granted, defts are not going to suffer any loss. On the contrary, if injunction is not granted, plaintiff is going to suffer irreparable loss. Balance of convenience is in favour of plaintiff. Plaintiff is sure to succeed in the suit. Hence application may kindly be allowed.

[5] On being served, defendant no.1 to 6 resisted the application by filing reply at Exh-31 and contended therein that plaintiff has filed false suit. Plaintiff has not added other co-sharers shown in 7x12 extract of suit property. Plaintiff has suppressed the facts from the Court and by making false & imaginary statements, mis-led the Court. Plaintiff has filed instant suit only in order to harass defendants and to put them under pressure. Plaintiff has abused the process of law. Suit is barred by limitation. No cause of action to file instant suit has arisen. Plaintiff has not mentioned suit property properly and he has given wrong boundaries thereof. Plaintiff has not paid proper Court fee. Hence suit is liable to be dismissed.

[6] Defendants further contended that survey number of G.No.146 is 21/4 and survey number of G.No.148 is

21/2. As per available records, suit property was in the name of grandfather of deft.no.1 and his late brother Shri. Tukaram Genu Thopte i.e. Genu Kondi Thopte since prior to 1945. Genu Kondi Thopte was in actual possession of the above property and during his life time, he and his family used to depend on it for their livelihood. After death of Genu Kondi Thopte, name of father of deft.no.1 and his brother Tukaram i.e. Maruti Genu Thopte came to be recorded in respect to suit property. Deft.no.1, his brother, father and grandfather used to cultivate the suit property. Plaintiff, his father i.e. Dhondiba Hari Bathe, brothers of plaintiff - Suryakant, Arjun and deceased brother Tulshidas, similarly sisters Muktabai, Yamunabai or Salubai were never in possession of suit property. Therefore no question of cultivating the suit property by them arises.

[7] Defendants further contended that plaintiff, his father, his any other brother or sister have neither obstructed deft.no.1, his brother Tukaram or any other person nor asked possession of any part in suit property from them. In fact plaintiff, his brother and father were not interested in cultivating the suit property. Name of deceased Dhondiba was bogus in respect to suit property and after his death, names of plaintiff and his brothers and sisters were also bogus. Apart from this, plaintiff, his brothers and sisters had and has no concern with suit property. Names of defendants have been recorded in 7x12 extract of suit property as per mutation no. 509 after issuing notices to the concerned persons, recording their statements and panchanama etc.

Accordingly since beginning, plaintiff is aware of the above entries. In spite of having knowledge, plaintiff has intentionally not made any complaint or taken any objection against defendants till today. Brothers and sisters of plaintiffs have also not taken any action against defendants. In fact, since beginning they admit the ownership and possession of defendants over suit property.

[8] Defendants further contended that they have effected partition between themselves and entered into sale transaction with defts. no. 13 to 41 as per mutation no.818, 877, 1913, 2992, 928, 1189, 1213, 1239, 1272, 1287, 1314, 1319, 1345, 1580, 1973, 1998, 1999, 2194, 2221, 2222, 2249 and 2282. Plaintiff, his brothers and sisters and their heirs all are knowing about the above every transaction since beginning. In fact, the ownership and possession of deft.no.13 to 41 over suit property was admitted to them. Presently defendants have only 10R area remaining in G.No.146 and 1 acre 4 R area remaining in G.No.148.

[9] Defendants further contended that plaintiff is not entitled to claim any relief in respect to suit property before Court. If T.I. is granted, defendants will suffer irreparable loss and they will be deprived of their legal rights. If application for T.I. is rejected, plaintiff is not going to suffer any loss. Hence application may kindly be rejected.

[10] In view of the above facts and circumstances, following points arise for my determination and I have given my findings thereon along with reasons as under-

Points :-

Findings :-

- | | |
|---|--------------------------|
| [1] Does plaintiff prove that prima-facie case is in his favour? ... | In the affirmative. |
| [2] Does plaintiff prove that balance of convenience lies in his favour ?. .. | In the affirmative. |
| [3] Does plaintiff prove that if TI is not granted, he will suffer irreparable loss or injury ? ... | In the affirmative. |
| [4] What order ? |As per final order. |

REASONS

[11] In support of his case, plaintiff has filed extracts of G.No.146, 148 of village Kenjale Tq. Bhor, consolidation scheme of khate no.106 of village Kenjale, extracts of mutation no.299, 509, 818, 877, 1911, 1912, 1913, 1914, 1915, 2191, 2192, 2193, 928, 1189, 1213, 1239, 1272, 1287, 1314, 1319, 1345, 1580, 1972, 1973, 1974, 1997, 1998, 1999, 2000, 2193, 2194, 2221, 2222, 2249, 2250, 2382, 2383 etc. Apart from that

plaintiff filed certain rulings on record i.e [1] 'NALINI w/o. ONKAR PATIL vs. GIRDHAR KASHINATH PATIL and others' [2002(4) Mh.L.J. 728, [2] 'Dayaram vs. Dawalatshah' 1971 DGLS (Soft.) 25, [3] 'Shri Shrikant R. Sankanwar & Ors. vs. Shri.Krishna Balu Naukudkar' 2003(1) ALL MR 1161 and [4] 'Kusum Hari and another vs. Vithal Vishnudas Devi and others' [1998(1) B.C.J.541 etc. Defendants did not file documents on record.

AS TO POINTS NO.1 to 4 :-

[12] Perused the record and rulings carefully. Heard Counsels of both sides at length. It is a suit for declaration, possession & permanent injunction.

[13] Plaintiff has filed 7x12 extracts of G.No.146 & 148 of village Kenjal on record. These show name of plaintiff and his brothers etc. till 1985-86. Extract of Consolidation shows name of Dhondiba Hari Bathe as owner and name of Maruti Genu Thopte in column of tenant and other rights. Mutation no.299 shows name of plaintiff, his brothers and sisters and it was taken in 1984. Mutation No.509 shows that on application by Tukaram, this entry was taken. It further shows that at the time of registration of entry, plaintiff was present and he had no objection. Mutation No.818 is regarding loan case by Tukaram and Namdeo. Mutation No.1912 is regarding sale transaction. Mutation No.1913 shows regarding partition by Tukaram. Other

mutation numbers/entries are regarding loan cases, release deeds, partitions and sale transactions etc. It is pertinent to note that defendants contended that plaintiff, his brothers and father were not interested in cultivating the suit property. Name of deceased Dhondiba was bogus in respect to suit property and after his death, names of plaintiff and his brothers and sisters were also bogus. Extract of consolidation scheme shows name of Dhondiba Hari Bathe. Defendants did not explain as to how they became owners. Mutation no.299 shows name of plaintiff, his brothers and sisters. Mutation no.509 certainly creates doubt. Defendants contended that suit is barred by limitation and plaintiff also did not mention as to when he came to know about mutation no.509 or acts of defendants. It is pertinent to note that limitation is a question of law and facts. Therefore considering all these circumstances, it appears that plaintiff has a triable case. Whether plaintiff is entitled to the reliefs as prayed for by him or not will be decided at the time of full fledged trial. Hence at this juncture, considering all circumstances of the case, provisions of law and also in the interest of justice, I proceed to pass following order -

ORDER

[1] Application is allowed.

[2] Defts.no.1 to 6 are hereby restrained from alienating the suit property in any manner or creating any encumbrance thereon till decision of suit.

[3] No order as to costs.

[4] Application is disposed-off accordingly.

Date/- 05/08/2014.

*(A. M. Husain)
Civil Judge, Junior Division
Tq.Bhor, Dist.Pune.*

*Note:- I affirm that contents of this P. D. F. file
order/judgment are same words as per
original judgment.*

*Name of the Court : Civil Judge Junior Division
Tq.Bhor, District : Pune
(A. M. Husain)*

Name of Stenographer : R. I. Sayyed.

Date of P. D. F. : 06/08/2014.