

Order Passed below Exhibit 5 in RCS No. 236/2013

This is an application Under Section 151 r/w Order 39 of C.P.C. The present suit is filed by plaintiff for Specific performance, declaration and permanent injunction, restraining to defendants from transferring, alienating, disposing off and creating third party interest over the suit property of plaintiff. As well Plaintiff prays for permanent injunction restraining Defendants from disturbing the peaceful possession of the Plaintiff and interfering with the possession thereof and forcefully evicting the Plaintiff from the suit properties. By this application Plaintiff prays for temporary injunction against Defendants till the disposal of suit.

2] By filing present application it is contended that Shri. Hariba Sonba Chavan was in actual and physical possession since around 1972-73 and was tilling the suit properties. Shri. Dashrath Dagadu Chavan and his family member and family members of Shri. Bajirao Dagadu Chavan were not tilling the suit properties personally and were not getting substantial income out of the suit properties. They were desirous of selling the suit properties considering the legal necessity of their family and for benefit of their other properties and therefore approached to Hariba Chavan and offered to sell the suit properties to him.

3] Around September 1977 negotiations, deligations and discussions were took place between the parties and it was

orally agreed between them that Shri. Hariba Sonba Chavan shall purchase the suit properties against the consideration of Rs. 5,000/- and the said owners shall transfer the suit properties in the name of Shri. Hariba Sonba Chavan. Since, the suit properties are Ramoshi Watan lands and since the suit properties were held by the said owners of "New tenure" it was agreed that the owner shall apply for necessary prior permission and only after obtaining prior permission the owners shall execute and register a Sale Deed in favour of Shri. Hariba Chavan. All the terms and conditions for transferring the suit properties were finally concluded and settled between the parties.

4] In pursuance of the said oral agreement Shri. Dashrath Dagadu Chavan in the capacity of Karta got prepared an application dated 14/09/1977 with an intention of submitting the same to the Collector office and thereby seeking prior permission for transferring the suit properties in favour of Shri. Hariba Chavan. The said owner also took a statement of Shri. Hariba Chavan on the said application and requested Shri. Hariba Chavan to submit the same with the Collector Office. Thereafter, owing to the difficulties faced in the Collector Office, Shri. Hariba Chavan requested the owners to complete the procedure by themselves as agreed before.

5] The owners insisted for payment of consideration amount and represented that they shall apply and obtain necessary

permission after receiving the consideration amount. Since they shall require some funds for initiate and completing the process, the entire amount of Rs. 5000/- was paid by Shri. Hariba Chavan in cash in presence of Plaintiff and one Shri. Ishwar Narayan Chavan and the owners also accepted the same. Shri. Hariba requested owners to apply for and obtain necessary permission as required for transfer of properties and every time the owners informed Shri. Hariba that the process was underway and in due course. They would obtain the necessary permission. Hariba Chavan relied on the promises and assurance given by the owners and continued his activities on the suit properties without any objection and interference.

6] Physical possession was with Shri. Hariba and he was tilling the suit properties. He did not cancelled or terminated the transaction because there was no express refusal or avoidance shown on behalf of the said owners at any point of time.

7] Around 1993, the owners informed that they have paid initial amount of Nazarana for getting the properties regranted on “ old tenure”. The owners also shown challan to Shri. Hariba and assured him that permission will be obtained very soon. Shri. Hariba continued to possess, occupy and tilling the suit properties without getting registered Sale Deed in his favour. Hariba and after his death, his son i.e. Plaintiff never felt that the said owners would betray them. Therefore, time to time Shri. Hariba and thereafter the Plaintiff inquired about the progress

and the owners kept on assuring the Plaintiff that they would obtain permission and would transfer the suit properties to Plaintiff. In order to avoid disputes the Plaintiff did not initiate the legal proceeding. Plaintiff is also in possession and occupation of some adjoining lands. The Plaintiff had been tilling the land and crops growing in the field are mostly consumed by the family. Plaintiff planted 33 trees (11 each of chiku, mango and coconut out of which as on date 6 chiku trees and two mango trees are still alive.) A bore has been taken in Gat no. 525. The Plaintiff has right for drawing water from the well located in Gat no. 479. Pipeline has been laid through the lands including Gat no. 495 and 496 till the tank which has been constructed in Gat no. 496, a pump have been installed. On the lands in possession and occupation of the Plaintiff are irrigated on the water out of the said bore, well and tank. Plaintiff has taken efforts for levelling the suit properties. He incurred expenses and costs for improvement of the lands.

8] Recently, in June 2013 Defendant no. 3 came to the suit properties and asked the Plaintiff to vacate the suit properties. After inquiry Defendant no. 3 informed that he had purchased Gat no. 495 out of the suit properties for valuable consideration from other Defendants. Plaintiff refused to vacate and release the possession on the suit properties, the Defendant no. 3 approached 'Tanta Mukti Kendra' and Police Station Walha. The concerned Police officers called the Plaintiff and his son for interrogation during which the Plaintiff placed the said

application dated 14/09/1977 which was passed on to the Plaintiff by his father and challan which the owner had given on record of police and informed him that he was entitled to get a Sale Deed executed and registered in his name from the owner and his father was in possession of the properties even before the said oral agreement and his family was tilling the suit properties since 1972-73.

9] On dated 24/04/2012 by registered sale deed Shri. Dashrath Dagadu Chavan, Defendant no. 1D, Defendant no. 1E and Defendant no. 2 behind back of Plaintiff executed and registered a Sale Deed in favour of Defendant no. 3 and thereby transferred Gat no. 495 admeasuring about 00 H. 34 R. out of the suit properties. The oral agreement is subsisting valid and binding upon the parties. The Plaintiff's father had paid the entire agreed consideration amount of Rs. 5000/- and owners had received the said amount in cash. The father of Plaintiff had performed his part of contract, Nothing was left for the Plaintiff to perform. The Plaintiff was, has been and is always willing and ready to accept the performance of the Defendants. Defendants committed breach of the agreed terms and conditions of oral agreement and illegally entered into transaction with Defendant no. 3. Defendant Dashrath Chavan, Defendant no. 1D, Defendant no. 1E and Defendant no. 2 in collusion with Defendant no. 3 have played fraud upon Plaintiff. The family of Plaintiff was, has been and is continuously in physical possession of the suit properties since 1972-73. Defendant no. 3 had sufficient

information and knowledge as regards to rights of the Plaintiff. He was well aware about the possession and occupation of the Plaintiff over the suit properties. Many occasions, Defendant no. 3 purchased and cut maize from the suit properties for fodder for his cattle. Defendant no. 3 is a not bonafide purchaser of suit properties. The Sale Deed entered between the Defendants are not binding upon Plaintiff. The Defendant no. 3 has wrongly claimed the possession of the suit properties, he intends to evict the Plaintiff from the suit properties. Therefore, Plaintiff constraint to file present application for temporary injunction.

10] On the other hand, suit summons and notices issued to Defendants. They appeared and filed their say below Exh. 32. They denied all the contentions of the Plaintiff and contended that the suit properties originally belongs to Bajirao Dagadu Chavan. On dated 01/07/1978 Bajirao Dagadu Chavan was expired. After his demise name of his real brother Dashrath Dagadu Chavan and sister Baydabai Baban Khomne entered on records of rights as his legal heirs by mutation entry no. 148. After inquiry, the said mutation entry was certified on dated 21/08/1978. As per mutation entry no. 148 name of Dashrath Dagadu Chavan was entered on 7/12 extract of suit properties as a Manager. Since then till his death, he was cultivating suit properties. On dated 26/04/2012, during lifetime of Dashrath Dagadu Chavan and his sister deceased Baydabai Baban Khomne and her daughter Ranjana Chandrakant Chavan i.e. present Defendant no. 2 by registered sale deed sold out suit properties

Gat no. 495 area 00 H. 31 R. + potkharaba 00 H. 03 R. to Defendant no. 3. The said Sale Deed was registered at Sub-Registrar office, Purandar bearing no. 2168/2012 and possession was also handed over to Defendant no. 3. Therefore, Plaintiff is not concerned with suit properties. As per sale deed name of Defendant no. 3 was recorded over 7/12 extract of suit properties by mutation entry no. 3626. Since then, Defendant no. 3 is the owner and cultivating suit properties Gat no. 495 and he is also paying revenue. Plaintiff has not challenged the said sale deed and mutation entry.

11] Present suit and application of Plaintiff is imaginary and false. It is filed only to harass Defendants. There were no legal necessity for sale of suit properties to Hariba Chavan. No any agreement took place between deceased Bajirao Dagadu Ramoshi, Dashrath Dagadu Ramoshi and father of Plaintiff namely Hariba Chavan. It is also contended that no any application is filed before the Collector, Pune for obtaining permission to sale because of suit properties are Ramoshi watan lands. Bajirao Dagadu Chavan and Dashrath Dagadu Chavan never signed on challan dated 05/05/1993 never gave consent for the same. On 7/12 extract of Gat no. 529 and 525 there are names of Defendants no. 1A to 1E in possession column and also in cultivation column. In a suit properties there were no any cultivation of Plaintiff and his father Hariba Chavan. Therefore, suit of Plaintiff is liable to be dismissed. In 7/12 extract Gat no. 495 name of Defendant no. 3 is shown as a owner and

cultivator. Defendant no. 3 is a owner of Gat no. 495 from Sale Deed and he is in possession and cultivation of the same. Furthermore, Defendants no. 1A to 1E are the owners and cultivators of Gat no. 525 and 529. Plaintiff is not concerned with the suit properties, therefore, application of Plaintiff for temporary injunction is liable to be rejected.

12] I have framed following points for determination along with my findings there on as under:

<u>POINTS</u>	<u>FINDING</u>
1] Does the plaintiff prove that there exists prima facie case in his favour ?	...negative.
2] Does plaintiff further prove that balance of convenience lies in his favour?	... negative.
3] Does plaintiff further prove that plaintiff will suffer irreparable loss if the order of temporary injunction is not passed ?	... negative.
4] What order?	... As per final order.

R E A S O N S

AS TO POINTS NO. 1 TO 3 :

13] Present suit is filed by Plaintiff for Specific performance, declaration and perpetual injunction. Plaintiff in his support filed certain documents at Exh.3. He had filed photocopy of application dt. 14/09/1971, photocopies of 7/12 extract of Gat no. 495, 525, 529, photocopy of challan showing initial payment of amount of Nazrana, photocopy of sale deed dt. 26/04/1912,

photocopy of caveat notice, photocopy of cash memo dt. 13/05/2002 issued by Konde-Deshmukh Agro sales agency in favour of Plaintiff, photocopy of order from issued by Shri. Kirti Nursery seeding suppliers, affidavit of Ishwar Narayan.

14] The Defendants in support of their contentions filed certain documents below Exh. 44 which are mutation entry no. 148, 3626, affidavit of witness Navnath Baban Chavan in support of Defendants, affidavit of witness Hanumant Baban Nanaware in support of Defendants, affidavit of witness Tatya Rau Chavan in support of Defendants, 7/12 extracts of Gat no. 594, 523/A.

15] It is argued on behalf of Plaintiff that suit property Gat no. 495, area 00H. 34 R., Gat no. 525 area 00H. 57R., Gat no. 529 area 00H. 27 R. originally belong to Shri. Bajirao Dagadu Chavan and Dashrath Dagadu Chavan. They were desirous to sell suit properties, therefore, they approached to Shri. Hariba Chavan and offered to purchase suit properties from them. In September, 1977 discussions and negotiations took place between them and oral agreement of sale of suit properties took place between them for consideration of Rs. 5000/-. Entire amount was paid by Hariba Chavan to them. It was orally agreed between them that they shall transfer the suit properties in his favour by registered sale deed after obtaining the permission because of the suit properties are Ramoshi watan lands.

16] It is further argued that Dashrath Dagadu Chavan in

capacity of Karta prepared an application dt. 14/09/1977 with intention to submit the same to Collector Officer for seeking prior permission for transferring the suit properties in favour of Hariba Chavan. It is also argued that many times Hariba requested owner to apply for and obtain necessary permission for transferring the suit properties. At every times, the owner informed him that the process was under way and they would obtain necessary permission. The physical possession of suit properties was with Hariba and he was tilling the suit properties. It is further argued that Shri. Hariba did not cancel or terminate the transaction because of there was no expressed refusal or avoidance shown on behalf of the said owners at any point of time. It is also argued that in the year 1993 the owner informed him they had paid initial amount of Nazrana for getting the suit properties re-granted on old tenure. They also showed chalan to Shri. Hariba and assured him that permission will be obtained very soon. Relying on the promises and assurance Shri. Hariba continued to possess, occupy and till the suit properties without getting registered sale deed. On dt. 23/09/1992, Shri. Hariba expired leaving behind the Plaintiff and Defendant no. 4 as his legal heirs. Therefore, that the owners were, have been and are under obligation to transfer the suit properties as per the orally agreed terms and conditions, to the Plaintiff and Defendant no. 4.

17] It is further argued that behind back of Plaintiff, Shri. Dashrath Dagadu Chavan, Defendants no. 1(d), 1(e) and 2 had

executed and registered sale deed in favour of Defendant no. 3 and transferred suit property Gat no. 495 by registered sale deed dt. 26/04/2012.

18] In advance of argument Ld. Advocate for Plaintiff relied upon case law Sushil kumar vs. Rakesh Kumar, AIR 2004 SC 230 and submitted that mere entry in 7/12 extract of suit property is not a conclusive proof of ownership and possession, it is only for fiscal purpose. He also relied upon case law Murlidhar Bapuji Valve vs. Yallappa Lalu Chaugule, AIR 1994 BOM. 358. It is submitted that actual possession of suit claim remaining with Plaintiff for many years it is the constructive notice of suit agreement had to be inputted to Defendant. It is also argued that Plaintiff is in possession of suit properties even if the Plaintiff has failed to prove any agreement, his possession can only be disturbed by the Defendant by following due process of law and not by other means. He relied upon case law Smt. Pramila Lalbhai Dabhoya vs. Dr. Harish Lalbhai Dabhoya, 2005 All MR 288. He also relied upon case law Niamat Singh vs. Darbari Singh and others, AIR 1956 PUNJAB 230 and submitted that suit is within limitation. He also relied upon case law D. N. Raju vs. Smt. Santosh Verma and others, AIR 2006 AP 127 and Manick Lal Seal vs. K. P. Chaudhary, AIR 1976 Calcutta 115(1) submitted that there is no specific refusal or denial by the Defendants for specific performance, therefore suit is within limitation.

19] On the contrary, it is argued on behalf of Defendants that suit properties originally belong to Bajirao Dagadu Chavan. On dt. 01/07/1978 he was expired. After his demise, names of his brother Dagadu Chavan and sister Bayadabai Baban Khomane recorded over records of rights by mutation entry no. 148 and on dt. 21/08/1978 mutation entry no. 148 was certified. Name of Dashrath Dagadu Chavan was recorded over 7/12 extract as a Karta of joint family. Since then he was cultivating the suit properties. In lifetime of Dashrath Dagadu Chavan, his sister Bayadabai Baban Khomane and her daughter Ranjana Chandrakant Chavan i.e. Defendant no. 2 on dt. 26/04/2012 sold out Gat no. 495 area 31 R. + pot kharaba 3 R. to Defendant no. 3 for consideration of Rs. 2,00,000/- by registered sale deed and Defendant no. 3 took possession of the said property. Therefore, Plaintiff is not concerned with the said property. The name of Defendant no. 3 is recorded over records of rights in view of registered sale deed by mutation entry no. 3626. Since then Defendant no. 3 is a owner, cultivator and possessor and paying revenue.

20] It is also argued that Bajirao Dagadu Chavan and Dashrath Dagadu Chavan never entered into oral agreement with Plaintiff, never deposited chalan. On the 7/12 extract of suit properties Gat no. 529 and 525, there are the names of Defendants no. 1A to 1E as a owner and possessor. They are also cultivator of the suit lands. The Plaintiff and his father were never in possession of suit properties at any point of time. It is submitted that the

suit of Plaintiff is imaginary, therefore, submitted that application (Exh.5) for temporary injunction may be dismissed.

21] Gone through documents filed along with list (Exh.3) by Plaintiff. On the perusal of 7/12 extract of Gat no. 495, it appears that in owners column there is a name of Babu Babanrao Chavan (Defendant no. 3) as a owner. On the perusal of said extract in cultivation column name of cultivator shown as 'Khudda'. On the perusal of 7/12 extract of suit property i.e. Gat no. 525, it appears that in owners column there are names of Ranjana Chandrakant Chavan (Defendant no. 2), Shamrao Dashrath Chavan (Defendant no.1D), Chandrakant Dashrath Chavan (Defendant no. 1E), Sindhubai Daulat Bodare (Defendant no. 1A), Malan Suresh Jadhav (Defendant no. 1B), Shalan Dattatray Khomane (Defendant no. 1C) as owners and in cultivation column cultivators' name is shown as 'khudda'. On the perusal of 7/12 extract of suit property i.e. Gat no. 529, it appears that in owners column there are names of Ranjana Chandrakant Chavan (Defendant no. 2), Shamrao Dashrath Chavan (Defendant no.1D), Chandrakant Dashrath Chavan (Defendant no. 1E), Sindhubai Daulat Bodare (Defendant no. 1A), Malan Suresh Jadhav (Defendant no. 1B), Shalan Dattatray Khomane (Defendant no. 1C) as owners and in cultivation column cultivators' name is shown as 'khudda'. On the perusal of photocopy of chalan bearing no. 197, it appears that Dashrath Dagadu Chavan deposited Nazrana amount of Rs. 102/- for re-grant. On the perusal of photocopy of application

dt. 14/09/1977 the said application is in the name of Bajirao Dagadu Ramoshi and Dashrath Dagadu Ramoshi addressed to Collector, Pune in respect of suit properties Gat no. 496, 525 and 529 for permission to sell. On the perusal of the said application, it appears that it is not in a prescribed format. It also not discloses that the said application was received by the office of Collector. There is no any endorsement about it. The said application is on plain paper. On the perusal of 7/12 extract of Gat no. 595, 525, 529 names of Defendants appears as a owner and cultivators of the suit lands. It also appears that they are in possession of suit properties.

22] On the perusal of documents filed by Defendants below Exh. 44, it appears that mutation entry no. 148 was certified on dt. 31/08/1978. Mutation entry no. 148 discloses that on dt. 01/07/1978, Bajirao Dagadu Chavan expired and name of Dashrath Dagadu Chavan and Bayadabai Dagadu Khomane was recorded over records of rights as his legal heirs. It is the contention of Plaintiff that around September, 1977 negotiations and discussions took place between parties in respect of oral agreement of purchase of suit properties for consideration of Rs. 5000/-. On the perusal of mutation entry no. 148, it appears that the said entry was certified on 31/08/1978 and names of Dashrath Chavan and Bayadabai Chavan were recorded over records of rights of suit properties. There is no any explanation in the suit of Plaintiff. Furthermore, it prima facie appears that the said mutation entry was not challenged by Plaintiff till

today. Furthermore, on the perusal of mutation entry no. 3626 it appears that on dt. 26/04/2012 Dashrath Dagadu Chavan, Ranjana Chandrakant Chavan sold out suit property Gat no. 495 for consideration of Rs. 2,00,000/- by registered sale deed dt. 26/04/2012. It prima facie appears that since 1978 till today the said mutation entry is not challenged by Plaintiff. It also prima facie appears that there is no any efforts were taken by Plaintiff for recording his name over records of rights of suit properties since 1978 till today. The said period is so long period. Furthermore, the application dt. 14/09/1977 is on plain paper. At this stage it cannot be considered.

23] The Defendants to show they are in possession of suit properties filed the affidavit of Navnath Baban Chavan. In his affidavit witness Navnath Baban Chavan stated that suit properties Gat no. 495, 525, 529 originally belong to Late Dashrath Dagadu Chavan and he was in possession of suit properties. After his demise Defendants no. 1A to 1E inherited suit properties and they are the owners, possessors and cultivators of the suit properties. It is also contended that in lifetime of Late Dashrath Dagadu Chavan he sold out by registered sale deed Gat no. 495 to Defendant no. 3, since then Defendant no. 3 is in possession of Gat no. 495. The Defendants also filed the affidavit of second witness Hanumant Baban Rannaware, he also given similar statement in his affidavit. Furthermore, third witness Tatyra Rau Chavan also gave similar statements in his affidavit.

24] Plaintiff contended that he is possession of suit properties, to show he is possession of suit properties, he had filed photocopy of order form issued by Shri. Kirti Nursery seedling suppliers. On the perusal of said copy it appears that 11 plants of coconut, 11 plants of mango and 11 plants of Sapota were ordered on dt. 25/06/2002 from Shri. Kirti Nursery Seedling suppliers which were delivered on dt. 20/07/2002. On perusal of the said photocopy, prima facie not discloses that the Plaintiff is in possession of suit property. It prima facie appears that there is long delay in filing suit, there is no any explanation about delay. Furthermore, it prima facie appears that Plaintiff had not taken any efforts for to record his name over records of rights of suit properties. It further appears that since long the names of Defendants appears over record of rights as owners and cultivators of suit properties. It prima facie appears that Plaintiff is not in possession of suit properties. Therefore, I answer point no. 1 in negative.

AS TO POINT NO. 2 AND 3

25] It prima facie appears that alleged oral agreement is in the year 1977, after lapse of 36 years present suit is filed by Plaintiff for specific performance, declaration and perpetual injunction. It prima facie shows that Plaintiff has no prima facie case. It prima facie appears that during the above mentioned 36 years period Plaintiff has not taken any efforts for recording his name over record of rights of suit properties. Photocopy of application dt. 14/09/1977 is on plain paper, there is no any endorsement to

show that the said application is submitted before Collector, Pune for obtaining permission for sale. Furthermore, it prima facie appears that the said application is not in a prescribed format. The 7/12 extract of Gat no. 495, 525, 529 prima facie show that since long there is a name entry of Defendants, also prima facie shows the cultivation of Defendants over suit properties. It prima facie shows that the Plaintiff is not in a possession of suit properties. There is no prima facie case in favour of Plaintiff. In such situation, if the injunction as prayed for is granted then Defendants would suffer a loss and hardship. On the other hand Plaintiff is not in possession of suit properties. In such situation, if injunction is not granted then it would not cause prejudice to the Plaintiff and Plaintiff would not suffer any irreparable loss. There is no balance of convenience in favour of Plaintiff. Hence I answer points no. 2 and 3 into the negative and in answer to point No. 4, I proceed to pass the following order.

ORDER

1] The application (Exh.5) is dismissed.

Saswad
Date:- 04/12/2014

(A. S. Pandagale)
Jt. Civil Judge J.D., Saswad.

CERTIFICATE

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

Name of Steno : Smt. S. S. Phadke, Steno L.G.

Name of Court : A. S. Pandagale.
Jt. CJJD & JMFC, Saswad.

Date : 04/12/2014

Order signed by
Presiding Officer on : 10/12/2014

Order uploaded on : 15/12/2014
