

ORDER BELOW EXH. No. 5 in R.C.S. No. 01/2010.

Perused the application. Through this application the plaintiff is seeking relief of temporary injunction restraining the defendant No. 14 from disturbing his possession over the Survey No. 52/2A, admeasuring 0-80-3, Survey No. 52/2B, admeasuring 0-33-1, Survey No. 56/6B/2, admeasuring 2-22-0 of village Mandavane, Taluka- Karjat, District- Raigad (hereinafter referred as "the suit properties").

2 ) In short, the case of the plaintiff is as under.

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One Hari Mahadeo Karve was the original owner of the suit properties. He died in the year 1965. During lifetime of Hari Mahadeo Karve, from year 1950 the suit properties were under the cultivation of father of the plaintiff. Hari Mahadeo Karve left village Mandavane after Gandhi assassination. Defendant No. 1 to 11 are the legal heirs of Hari Mahadeo Karve. After the death of Hari Mahadeo Karve names of defendant No. 1 to 11 came to be recorded in the revenue record of the suit properties. The plaintiffs father and thereafter the plaintiff is enjoying peaceful and uninterrupted possession of the suit property since 1950. Defendant No. 1 to 11 never came to village Mandavane.

3) It is further case of the plaintiff that, defendant No. 1 to 11 sold the land bearing Survey No. 52, Hissa No. 2A, and Survey No. 52, Hissa No. 2B to defendant No. 13. They also sold the land Survey No. 56, Hissa No. 6B to defendant No. 12.

Thereafter defendant No. 12 and 13 sold the lands to defendant No. 14. At the same time defendant No. 12 and 13 issued paper notice and invited objection for the same. On 15-10-2008 the plaintiff raised objection for making sale of it to defendant No. 14. In spite of that, defendant No. 12 and 13 executed sale deed of the suit properties in favour of defendant No. 14. Since then defendant No. 14 trying to obstruct possession of the plaintiff of the suit properties. On 24-12-2009 cause of action arose to file said suit. Consequently the plaintiff has filed present suit for the declaration that, he is possessor of the suit properties and he acquired ownership in it by way of adverse possession. The plaintiff also prays for permanent injunction restraining the defendants from disturbing his possession. The plaintiff is having apprehension that, during the pendency of the suit defendant No. 14 will dispossess him from the suit properties, therefore the plaintiff filed present application for temporary injunction restraining the defendants from disturbing his possession till the conclusion of the suit.

4 ) Defendant No. 14 contested the application by filing his say at Exh. No. 14. He contends that, the suit properties were of the ownership and possession of Hari Mahadeo Karve. After the death of Hari Mahadeo Karve defendant No. 1 to 11 becomes owner and possessor of it. Thereafter defendant No. 12 and 13, acquired interest in it. Defendant No. 14 purchased the suit properties from defendant

No. 12 and 13. Defendant No. 12 and 13 handed over possession of it to him. Since then he is in possession. The plaintiff filed present suit with malafide intention and to extract money from him. He denied that, the plaintiff was in the possession from the year 1950. Lastly he prays for the rejection of the application.

5 ) Points for determination and my findings thereon as follows.

#### POINTS

#### FINDINGS

- (1) Whether the plaintiff has made out prima facie case? ..in the negative.
- (2) Whether the plaintiff is having balance of convenience in her favour? ..in the negative.

(4)

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(3) Whether irreparable loss will be caused to the plaintiff, if the application is not allowed?  
negative.

..in the

(4) What order?  
application

..The  
is rejected.

:: REASONS ::

As to Point No. 1. :-

6 ) Herein it appears from the pleadings of both the parties that, the plaintiff is claiming his peaceful and uninterrupted possession over the suit properties since 1950. Defendant No. 1 to 11 who are the legal heirs of one Hari Mahadeo Karve are original owner of the suit properties. However They were never in the possession of the suit properties. By taking undue advantage of the fact of their names in the revenue record of the suit properties they sold the suit properties to defendant No.12 and 13. Defendant No. 12 and 13 sold it to defendant No. 14. On the other hand it is the contention of defendant No. 14 that, Hari Mahadeo Karve was original owner and possessor of the suit properties. Thereafter defendant No. 1 to 11 becomes its owners and possessor. Thereafter defendant No. 12 and 13 purchased it. He purchased the suit properties from defendant No. 12 and 13. They handed over possession

of it to him and now he is in possession of it.

7 ) Learned advocate of the plaintiff submits that, xerox copies of revenue tax receipts placed on record shows that in the year 1989, 2006, 2008 the plaintiff has paid revenue of the suit properties. This fact itself shows that, the plaintiff is in the possession of the suit properties. Learned advocate of the plaintiff further submits that, on 15-10-2008 when defendant No. 12 and 13 invited objection for the sale of the suit properties to defendant No. 14 the plaintiff raised his objection by issuing notice defendant No. 14 through his advocate. This fact also prima facie shows that, he is in the possession of the suit properties.

8 ) On the other hand learned advocate of the defendant No. 14 submits that, the plaintiff never objected revenue entries in the suit properties standing in the name of Hari Karve, and defendant No. 1 to 11 presently revenue record of the suit land is standing in the name of defendant No. 14.

9 ) Herein the plaintiff is claiming his possession over the suit properties since the year 1950. In support of his contentions he placed on record revenue tax payment receipts of the year 1989, 2006 and 2008. The receipts shows that, one Madhav Hari Karve, Vinayak Hari Karve paid revenue of the suit properties through the plaintiff. Xerox copy of reply notice, dated 7-11

-2008 to the public notice, dated 15-10-2008 shows that, the plaintiff raised objection to the sale transaction but defendant No. 12,13 & 14 and informed then that he is in the possession of the suit properties.

10) The plaintiff has admitted that, revenue record of the suit properties was in the name of Hari Mahadeo Karve. Thereafter it changed in the names of defendant No. 1 to 11. 7x12 extract of the suit properties of the year 2009-2010 bears the name of defendant No. 14 as owner of it. Revenue record does not bear name of anyone in the possession column of it. In the circumstances, at this stage prima facie shows that, the suit properties were not in the possession of any other person other than its owners. Therefore 7x12 extract of the suit properties prima facie speaks about the possession of defendant No. 14 over the suit properties.

11) In the circumstances when the revenue entries are not in the name of the plaintiff in my view at this state it is difficult to conclude about the possession of the plaintiff over the suit property only on the basis of tax payment receipt and objection raised by him for the sale transaction but defendant No. 12,13 and 14. Except revenue payment receipts the plaintiff has not placed on record any other document showing the possession over the suit properties. Therefore at this

stage I do not find any reason for prima facie conclusion that, the plaintiff is in the possession of the suit properties since the year 1950.

12) If really the plaintiff is in the possession of the suit properties since 1950, then as to why his name is not reflected in the revenue record. The plaintiff has also not given any reason for not recording his name in the possession column of the 7x12 extract of the suit properties. In the circumstances, prima facie it appears to me that, the plaintiff has not adduced prima facie evidence in order to support his contentions that, he is in the possession of the suit properties since the year 1950. Therefore it is clear that, the plaintiff is failed to make out prima facie case. Hence I answer Point No. 1 in the negative.

As to Point No. 2 and 3. :-

13) As per the contentions of the plaintiff, defendant No. 14 is trying to disturb his possession over the suit properties. However, in view of negative finding of Point No. 1 I have already held that, the plaintiff has not made prima facie case. Therefore there is no question of irreparable loss and balance of convenience. Hence, I answer Point No. 2 and 3 in the negative.

As to Point No. 4. :-

14) In view of negative findings of Point Nos. 1 to

(8)

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3 it is clean that there is no prima facie case in favour of the plaintiff. There is no balance of convenience irreparable lose in favour of the plaintiff. If injunction is not granted. Therefore application will have to be rejected. Accordingly I answer Point No. 4 and pass the following order.

:: ORDER ::

The application is rejected.

Karjat,  
Date : 09-05-2011.  
Karjat.

(S.S. Parave)  
Jt. Civil Judge, J.D.

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[1] Date of dictation. : 09-05-2011.  
[2] Date of transcription. : 09-05-2011.  
[3] Date of signature. : 09-05-2011.