

ORDER BELOW EXH.5 IN REGULAR CIVIL SUIT No.13/2017

This is an application filed by the plaintiff in accordance with provisions of O. XXXIX, Rule-1 of the Code of Civil Procedure.

The application, in brief, is as under :-

02. Block No.8 admeasuring of 0 H.-30-0 R within limits of village Muthavali-Tale, Tal. Mangoan, Dist. Raigad is subject matter of the suit. This property is here-in-after referred as 'the suit property'.

03. The suit property is owned and possessed by the plaintiff. The defendants have no concern with the suit property. The suit property is a barren land. The plaintiff was at outstation for service. The defendants took undue advantage of his absence and got entered their name in revenue record of the suit property in capacity of a tenant. Accordingly, they have moved the application to Agricultural Lands Tribunal for sale of the suit property in their name in accordance with provisions of the Bombay Tenancy and Agricultural Lands Act (in short, BT & AL Act). Said tenancy application No.11/2012 is came to be allowed by the tribunal, which is devoid of merits. Therefore, the plaintiff filed Tenancy Appeal No.06/2013 in the Court of SDO, Mangaon. It also came to be dismissed with confirmation of order from Tenancy Application No.11/2012. Hence, the plaintiff filed revision in the Hon'ble Maharashtra Revenue Tribunal which came to be registered as REV/TNC/RAG/87/2016 and the tribunal set aside order of both the Courts. Accordingly, decision from Rev.No.87/2016 is came to be effected by deleting entry in name of the defendants.

04. During the period, the defendants have prepared for construction in the suit property on basis of their entry of possession in

revenue record of the suit property. The plaintiff sent notice to the defendants alongwith it's copy to Grampanchayat to stop the alleged construction. The defendants have not proceeded further with proposed construction. But, the defendants have prepared for same again in June, 2016. The plaintiff has sent notice to defendant No.1 and also to Grampanchayat to stop unathorised construction. However, Grampanchayat has not taken cognizance. Within time, the plaintiff received copy of Judgment of the Tribunal and accordingly, he filed application with BDO, Mangaon. As per the application, BDO issued notice to the defendants to stop the construction and also, directed Grampanchayat to remove unauthorised construction. But, the defendant has not stopped the alleged construction. Even, the Grampanchayat has not taken action. As the alleged sale under BT & AL Act is set aside, it will cause irreparable loss to the plaintiff in case of construction of house in the suit property by the defendants. Hence, the plaintiff prayed to restrain the defendants from erecting any construction in the suit property, till final disposal of the suit.

05. Defendant No.1 filed say cum written statement at Exh.20 and denied all adverse contentions made by the plaintiff. According to defendant No.1, the suit property is formed from S.No.84, H.No.1A and 1B (old S.No.84, H.No.1). The suit property was never possessed by the plaintiff or his predecessors. It was possessed by predecessor of the defendants viz. Malhari Balkrishna Wagh in capacity of a tenant. Entry in name of Malhari was effected as a possessor of the suit property and in name of Ramchandra Ballal Palvankar as a owner thereof vide M.E.No.775 of dtd.18.06.1969 at time of rectification of

Aakarfod Patrak. However, Malhari being tenant on tiller day itself, he became deemed purchaser of the suit property. Then, Consoluidation Scheme is made applicable to village Muthvali-Tale in the year 1980 and accordingly, said entry in name of Malhari is continued from that time in record of Block No.8 i.e. the suit property. There is also a house existing in the suit property right from time of Malhari. On demise of Malhari, entry in name of the defendants is effected in revenue record of the suit property vide M.E.No.116 on dtd.08.11.1995. Hence, the defendants have house in the suit property from last 33 years. They have obtained permission for repairs of the house on dtd.21.06.2013 from Grampanchayat. Hence, construction of the house is already completed and plastering work of the house only remains. The appropriate authorities already passed order for sale of the suit property in favour of the defendants vide provisions of Bt & AL Act. Decision of The Tribunal is challenged by the defendants vide writ petition, which is numbered as Stamp No.32594/2016. In such a case, if the application is allowed, it will cause irreparable loss to the defendants. On these counts, defendant No.1 claimed rejection of the application.

06. Defendant Nos.2 to 9 have filed pursis at Exh.28 adopting say of Exh.20.

07. The following points arises for my determination. I recorded findings thereon along with it's reasons, which are as under :-

<u>POINTS</u>	<u>FINDINGS</u>
(01) Whether the plaintiff proves prima-facie case ?	.. Yes.
(02) Whether the plaintiff proves that he will suffer irreparable loss, if the application is rejected ?	.. Yes.
(03) Whether the plaintiff proves that balance of convenience lies in his favour ?	.. Yes.
(04) What order ?	... The application is allowed.

-:- REASONS -:-

AS TO POINT NOS.1 TO 4 :-

08. The plaintiff came with specific case that he is owner and possessor of the suit property, which is a barren land itself. But, they have taken undue advantage of absence of the plaintiff from village due to his service and accordingly, got entered their names in revenue record of the suit property in capacity of a tenant. The defendants have made application with Agricultural Land Tribunal vide No.11/2012, in which, order for sale of the suit property in name of the defendants has been passed by the tribunal. Appeal thereon by the plaintiff is dismissed by SDO, Mangaon. However, Maharashtra Revenue Tribunal set aside order of the Revenue Courts in Revision No.87/2016. Hence, the defendants have no concern with the suit property.

09. Per contra, the defendants came with the case that their

predecessor viz. Malhari was a tenant of the suit property and accordingly, he become deemed purchaser of the suit property on tillers day itself. There is also entry in name of Malhari in rectification of Aakar Phod Patrak in the year 1969. Hence, the defendants being possessor of the suit property in capacity of a tenant, Agricultural Land Tribunal passed order for sale of the suit property in favour of the defendants as per provisions of BT & AL Act. Said decision is confirmed by SDO, Mangaon. But, the Maharashtra Revenue Tribunal has allowed revision of the plaintiff, which is challenged by the defendants in the Hon'ble High Court.

10. In view of the above said pleadings, it is crystal clear that the plaintiff is admittedly owner of the suit property. But, the sole dispute is as to Whether the defendants were possessors of the suit property in capacity of a tenant through their predecessor viz. Malhari.

11. In this context, it is settled law that this Court has no jurisdiction to go into that question in accordance with S.85A of BT & AL Act. At the same time, it cannot be overlooked that the Competent Authority i.e. the Hon'ble Maharashtra Revenue Tribunal has rejected claim of the defendants as a tenant in the suit property. Accordingly, M.E.No.555 is effected to give effect to decision of the Hon'ble Revenue Tribunal. Though, there is writ petition by the defendants, it appears that it is yet not admitted by the Hon'ble High Court. Hence, at this juncture, it is clear that the defendants could not be termed as a tenants of the suit property, as per decision of the Maharashtra

Revenue Tribunal. In circumstances, the only documents in nature of Assessment entries in name of defendant No.1 from time of Malhari from 1983 till today need not be considered to probe in to question of his possession in the suit property in capacity of a tenant. Hence, the plaintiff proves prima facie case to be in his favour.

12. Now, in light of the alleged construction, it is submitted by Ld. Advocate for the defendants that the defendants are only repairing house in the suit property with permission of Grampanchayat and that too, with purpose of it's use as a farm house. In this backdrop, it is imperative to state that as per S.42 of BT & AL Act, the defendants are entitled to erect farm house in the suit property or made such improvements in it and as per S.7 (d) of Said Act, improvement means the erection of buildings on the land, required for the convenient or profitable use of such land for agricultural purposes. However, as stated earlier, claim of the defendants over the suit property in capacity of a tenant is rejected by the Competent Authority. Moreover, considering photographs filed below Exh.18, the alleged construction cannot be construed as repairs or construction of farm house. In the result, argument that the defendants are entitled to erect farm house does not find legal support.

13. Now, coming towards factum of irreparable injury, it is submitted by Ld. Advocate for the defendants that the alleged construction is already completed to extent of roof level and only fixing of doors, widows and plastering works remained uncompleted. In this regard, photographs below Exh.18 clearly shows that RCC

construction to the roof level is completed. However, it cannot be overlooked that being proceeding sub-judice before the Hon'ble Revenue Tribunal, the plaintiff consistently made application of dtd.27.09.2016 and 28.10.2016 to Sarpanch and BDO (Exh.4/4 and 4/5) to stop the proposed construction in the suit property. Even, it appears from letter of BDO to Sarpanch (Exh.4/6) that though Rev.No.87/2016 has been decided in favour of the plaintiff on dtd.01.09.2016, Grampanchayat other than to stop the construction, has passed resolution No.102/1 on dtd.25.10.2016. Though, copy of such resolution has not filed on record, as per written statement itself, said resolution is passed that only after getting right declared by the plaintiff from Civil Court, the alleged construction will b stopped.

14. Hence, it is crystal clear that in spite of repeated efforts made by the plaintiff, he failed to stop the construction even after order in his favour from Tribunal only due to intentional failure of Grampanchayat to take action against the defendants. Hence, it can be otherwise inferred that the defendants only with a view to create his illegal rights in the suit property, intended to complete the alleged construction in the suit property in hush-hush manner. In the result, it cannot be said that the plaintiff is indolent to take action against the defendants. On the contrary, it is clear that he made necessary efforts to stop said construction in the suit property at the earliest.

15. In circumstances, if the application is rejected, the suit property will be in a irretrievable condition and it amounts to protect unauthorised construction by neglecting judgment of the Hon'ble

Revenue Tribunal. Further, there will be multiplicity of proceedings. If the application is rejected, at the end the court would not be able to vindicate the cause of justice. Resultantly, balance of convenience also lies in favour of the plaintiff. In this regard, I would like to rely on **Deoraj vs. State of Maharashtra & Ors. (AIR 2004 SC 1975)**, “The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice.”

16. In view of foregoing discussion, it is clear that the plaintiff proves prima facie case, balance of convenience and irreparable loss for grant of temporary injunction. In the result, the application will have to be allowed. Hence, point Nos.1 to 3 are answered in the affirmative and in answer to point No.4, I pass the following order :-

-:- ORDER -:-

- (01) The application is allowed.
- (02) The defendants or any body else on their behalf restrained from raising any further construction in the suit property, till final disposal of the suit.
- (03) Costs on cause.

Date :- 10/04/2017.
Place :- Mangaon

(P. S. Shinde)
Civil Judge Junior Division,
Mangaon.