

ORDER BELOW EXH.5

1. This is an application under Section 94 read with Order 39, Rule 1, of Code of Civil Procedure for temporary injunction during pendency of suit.

2. As per plaintiff, his father deceased Dhondu and the father of defendant No.1, Shivram, deceased Jayram, were real brothers. The plaintiff's father Dhondu was residing at Mumbai and used to come to his village and helping physically and financially to the father of defendant No.1, deceased Jayram. The suit properties situated at Mouza Tersebambarde, Tal. Kudal, Dist. Sindhurg, are jointly tenanted by both the parties. Taking advantage of the fact that plaintiff's father was residing at Mumbai, deceased Jayram mutated majority of the properties in his name and meager portion of the properties in the name of plaintiff's father. Out of the suit properties the owner of some of the properties Ramchandra Babaji Jadye filed suit against plaintiff and defendant's father bearing R.C.S. No. 43/1960 and Summary Suit No.6/1961, for recovery of rent of tenanted property. In those suits the original owners claimed that the suit properties are jointly tenanted by father of plaintiff and defendant and each of them are having half share in those properties. The house No.280, owned by plaintiff is also situated in one of the suit property. In the year 1991, the defendant's father also admitted the share of plaintiff in written before respected persons.

3. Despite having knowledge of this the defendants approached this court and filed suit for injunction bearing R.C.S. No. 67/1996. The said suit was dismissed. But, the first appeal against it was allowed. Then plaintiff preferred second appeal and it is still pending before High Court. The judgment and decree passed by Appellate Court is stayed and it is

directed that parties shall maintain *status quo*. The plaintiff's house bearing No. 280, is located in Survey No. 123/20. There is a road of width of 10 feet passing through this property approaching plaintiff's house. The said fact is admitted by defendant No.1 in evidence recorded during R.C.S. No. 67/1996. Despite that defendants are obstructing the enjoyment of plaintiff of this property. In the month of May 2016, defendants prevented plaintiff from going to his house. Hence, he approached this court and filed this suit and present application in it for temporary injunction.

4. Defendants vide their say, Exh.33, denied the connection of plaintiff with the suit properties. They also denied the tenability of suit and application for want of cause of action, proper frame and principle of *res judicata*. They contended that the suit properties are separately tenanted by their predecessors and later on purchased by them. Defendants also relied on previous litigation and contended that their right is already upheld by competent court and hence the suit and application cannot be entertained.

5. Heard both the sides at length. Their submissions are in tune with their respective pleadings. Considering the pleadings and submissions of both the parties following points arrived for my determination and I recorded my findings on each of them, for the reasons discussed below-

Sr. No.	POINTS	FINDINGS
1.	<i>Whether the plaintiff have made out a strong prima facie case to justify grant of interim injunction?</i>	<i>.....In the negative.</i>
2.	<i>Whether balance of convenience lies in favour of plaintiff?</i>	<i>.....In the negative.</i>
3.	<i>Whether any irreparable damage or loss may result to plaintiff if injunction is withheld?</i>	<i>.....In the negative.</i>

4.	<i>What order ?</i>	<i>...Application is rejected.</i>
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REASONS

AS TO POINT NOS.1 TO 3_ -

6. As all these points are interrelated, therefore, I decided them with common reasoning. As per plaintiff his father and the father of defendant No.1, jointly tenanted the suit properties and are in joint possession of them. In the mean time defendant's father fraudulently mutated all the suit properties in his name and now obstructing his possession over suit properties.

7. In support of his case plaintiff relied on his affidavit and certain documents. The documents pertaining to revenue record show that the suit properties are standing in the name of defendants or their father. Later on some proceedings occurred in this court between original tenants and the plaintiff's father and defendant's father. In those matters both of them are arrayed as defendants in capacity of joint tenants.

8. However, the plaintiff pleaded and hence admitted that defendant's father filed suit bearing R.C.S. No. 67/1996, against him and sought injunction in respect of suit properties. Though suit was dismissed, the first appeal was allowed and injunction granted against plaintiff. In this regard the plaintiff preferred second appeal and decree of first Appellate Court was stayed.

9. Thus, it is clear that there is finding of Competent Court in favour of defendants and their possession is already upheld by this court. In such a situation there should be strong evidence in favour of plaintiff to support his claim of possession so that the decree of Competent Court can be ignored. If we perused record there is no such material produced by the plaintiff. Plaintiff filed on record the documents of the suits filed by

original owner and the copy of order passed by High Court in second appeal, but not produced on record the judgment and order of first Appellate Court. From this conduct it seems that plaintiff is concealing something material from this court. This fact is strongly against the claim of plaintiff.

10. The plaintiff pleaded that findings pertaining to his possession are recorded by High Court in its order of staying of the judgment of first Appellate Court. Said order is on record. There reflects nothing of such a nature whereby such observations are made. Further, plaintiff relied on the deposition of defendant recorded in R.C.S. No. 67/1996. The copy of this deposition show that the fact of tenancy is admitted by defendant, but fact of joint possession and joint tenancy over all the suit properties is denied. Therefore, it can be said that there is no evidence in favour of plaintiff supporting his claim of possession.

11. In view of above observations it is clear that plaintiff failed to make out strong *prima facie* case in his favour. So also, if the injunction is granted there is every possibility of passing orders contradictory to the decree of Appellate Court wherein possession of defendant is upheld. Therefore, the balance of convenience lies in favour of defendants and if injunction is granted defendants will suffer irreparable loss. As such, I recorded my findings on remaining two points as well in the negative and hence following order -

ORDER

Application is rejected with costs.

Sd/-

KUDAL
DATE – 28 /02 /2019

(KOMALSING RAJPUT)
C.J.J.D., KUDAL, DIST. SINDHUDURG