

ORDER BELOW EXH. 5

1. Perused record. Heard learned advocate Shri. Amol Samant for the plaintiff.
2. As per plaintiff the suit property bearing Survey No. 59A/5 (old Survey No. 387), total area 0.34.04, assessed at Rs.00.09 Ps., situated at Mouza Nerur, Tal. Kudal, Dist. Sindhudurg, was actually purchased by his father vide provisions of Bombay Tenancy and Agricultural Lands Act, 1948, deceased Vishnu Krishna Parkar. Certificate U/s. 32-M of the said Act was also issued in the name of brother of plaintiff, Chandrakant Krishna Parkar, in the year 1980. The mutation entries are also effected and names of the plaintiff and his other family members were also recorded in revenue record of the suit property.
3. The defendants are not in anyway concerned with the property, but may be distant relatives. In the year 1990, without any knowledge to the plaintiff they mutated their names in the revenue record of the suit property vide M. E. No. 15906. Since then the names of plaintiff, his other family members and defendants are in the revenue record of the suit property. It is in possession of plaintiff.
4. The defendants on the basis of this forged entry without obtaining any valid permission from Grampanchayat and intimating to plaintiff, taking advantage of his absence started construction of a house over the front part of the suit property adjoining to main road.
5. In support of the above submissions in addition to affidavit plaintiff filed on record various documents. The certified copy of 7/12 extract shows that suit property is jointly standing in the name of both the parties. The M.E. No. 4207 and M.E. No. 13240, dated 11/06/1959 and 25/04/1980 respectively showing that the joint family members of the

plaintiff's family including his father became owners of the suit property. The another mutation entry M.E. No. 15906 showing that the name of father of some of the defendants recorded as co-owner on the application given by him. Though it is mentioned in the said document that after serving of notices this name was recorded, but in view of pleadings and other material this aspect atleast at this stage shows that needs to be verified from other evidence. The most important document is copy of certificate issued U/s. 32-M of Tenancy Act, having the status of conclusive proof, showing that the brother of plaintiff became owner of the suit property i.e. old Survey No. 387.

6. Thus from the above documents it is clear that plaintiff and his family members having substantial interest in the suit property. As compare to defendants their claim to title appearing strong. It is also shown that no permission or consent of the plaintiff is obtained though property is standing in the joint names. The plaint map showing that property is in "L" shape, one of the dead end of which is adjoining to main road, where defendants shown to be started construction. Photographs showing that construction is just started.

7. In view of comparative analysis of claim of title of plaintiff, the legality of the work started by defendants and as the frontage as well as the very approaching road of the plaintiff is going to be disturbed, I am of the opinion that if the proposed construction work stopped for some time, it is not going to adversely affected to defendants. Rather if it is not stopped and subsequently if the better title of the plaintiff and his possession is proved the original status of the property cannot be restored and as such in my opinion this is a fit case for granting ad interim injunction. Considering all these aspects and for protecting interest of the other side, following order -

ORDER

1. The defendants or anybody on their behalf are herewith restrained from carrying on any construction over any part of the property bearing Survey No. 59A/5 (old Survey No. 387), total area 0.34.04, assessed at Rs.00.09 Ps., situated at Mouza Nerur, Tal. Kudal, Dist. Sindhudurg, till the filing of say by the defendants.
2. Issue show cause notice to the defendants returnable on 30/12/2015, as to why the above interim injunction shall not be confirmed till the disposal of present suit.
3. Defendants are at liberty to approach this Court and apply for variation or cancellation of this order, before the fixed date with prior intimation to the plaintiff to that effect.
4. Plaintiff to comply O.39, R.3 of the Code of Civil Procedure.
5. Plaintiff is herewith directed to also get served the suit summons on defendants through special bailiff and deposit the necessary Bhatta within three days from today. If he failed to do so the above order stands vacated automatically.

Sd/-

KUDAL

DATE – 19 / 12 / 2015

(KOMALSING RAJPUT)

C.J.J.D., KUDAL, DIST.-SINDHUDURG