

**CNR NO. MHSI070000622022****Order passed below Exh. No.5**
(IA No.1/2022) in R.C.S. No.15/2022

This is an application filed by the plaintiff under O.39 R.1 and 2 of the Code of Civil Procedure (hereinafter in short referred as 'C.P.C.').

2. The case of plaintiff, in brief, is that the landed property situated in village Achara, Gaudwadi, in Survey No.42(428) Hissa No.21 is the subject matter of the present suit (hereinafter referred as a 'Suit property'). The plaintiff has contended that the defendants no.1 to 3 have no concerned with the suit property. Despite of that names of the defendants no.1 to 3 are recorded as tenants in the suit property. The defendants no.1 to 3 were never having occupancy over the suit property. The defendants no.1 to 3 have recorded their names as a legal heirs of the deceased Narayan Bhikaji Nare vide Mutation Entry No.4652. The said deceased Narayan Bhikaji Nare was also not having any rights over the suit property. The name of deceased Narayan Bhikaji Nare was recorded as a tenant vide Mutation Entry No.1036. In fact, deceased Narayan Bhikaji Nare was not a tenant in the suit property. Therefore, the said entry was recorded illegally.

3. The plaintiff has further contended that in the year 1946-47, names of the plaintiff's grandmother Rukmini Vithoba

Hadkar and her brother-in-law Gopal Narayan Hadkar were recorded as protected tenants. The defendants no.1 to 3 with the assistance of the revenue officer removed name of the plaintiff's grandmother. The plaintiff and the defendants no.4 to 8 are having possession of the suit property. On 27/12/2021, defendants no.1 to 3 threatened the plaintiff's and defendants no.4 to 8, possession over the suit property. Therefore, it is prayed that temporary injunction be issued and restrained the defendants no.1 to 3 from causing obstruction to the plaintiff and defendants no.4 to 8 possession over the suit property. The plaintiff is having prima facie case. The balance of convenience lies in favour of the plaintiff. On refusal of injunction, plaintiff will suffer more loss. Therefore, prayed to allow the application.

4. The defendants no.1 to 3 have resisted the application by filing say at Exh.23. The defendants have contended that since before 1956-57, the defendants ancestral Narayan Bhikaji Nare was having occupancy over the suit property. In the year 1956-57, record of rights was prepared. At the time of preparation, defendant's predecessor Narayan Bhikaji Nare was having possession over the suit property, therefore, his name was recorded vide Mutation Entry No.1036. Since before 1956, the defendant's predecessor and thereafter, defendants are having uninterrupted occupancy over the suit property. It is further contended that the plaintiff is not having any rights over the suit property, nor having possession over the suit property. The plaintiff is not having any prima facie case, nor balance of convenience lies in favor of plaintiff. On refusal of injunction, plaintiff will not suffer any loss. On the contrary, the defendants

will suffer more loss. Therefore, prayed to reject the application.

5. Heard learned advocate Shri.S.S.Gavankar for the plaintiff and learned advocate Shri.U.B.Kulakarni for the defendants no.1 to 3. The learned advocate for the plaintiff has submitted that name of deceased Narayan Nare was recorded incorrectly in the revenue record. The defendants have recorded their names vide Mutation Entry No.4652. It is well settled that mutation entries are made only for fiscal purposes. It does not create or extinguish title. It is further submitted that in the year 1946-47, name of the plaintiff's grandmother was recorded as a protected tenant. The plaintiff is having possession over the suit property. The plaintiff should not be dispossessed without following due process of law. The plaintiff has produced extract of akharphod patrak. The akharphod patrak is a document of title and possession. The said document shows that predecessor of the plaintiff's having possession over the suit property. The plaintiff is having prima facie case. The balance of convenience lies in favour of the plaintiff. On refusal of injunction, plaintiff will suffer more loss, therefore, prayed to allow the application.

6. The learned advocate for the plaintiff has relied upon judgment of the Hon'ble High Court of Bombay in case of **Ramchandra Yeshwant Desai and ors vs Krishna Sitaram Desai and ors** reported in **2015 LawSuit (Bom)2558**, wherein it has been observed that in para

30 "In my view, the entires in the revenue record do not create or extinguish any title in respect of land in dispute. It enables the person whose favour the

mutation is ordered to pay land revenue. On the contrary, Botkhat and Akharphod Patrak can be considered as document of title and is sufficient to rebut the presumption arising from the mutation entry. I am respectfully bound by the judgment of this Court in case of Anant Dattatraya Thakur-Desai vs Mahadev Wasudeo Thakur-Desai which squarely applies to the facts of this case and also the judgment of the Supreme Court in the case of State of Andhra Pradesh & others vs Star Bone Mill & Fertiliser co. ”

7. On the other hand, learned advocate for the defendants no.1 to 3 has submitted that tenancy rights of predecessors of defendants have not been cancelled by any competent court. Name of the predecessor of the defendants namely Narayan Bhikaji Nare was recorded as a tenant in the suit property vide Mutation Entry No.1036 dated 16/07/1957. After the demise of Narayan Bhikaji Nare name of the defendants were recorded vide Mutation Entry No.4652. Since before the 1957, the defendants and their predecessors are having tenancy rights over the suit property. The plaintiff has not produced any documentary evidence to show that he is having possession over the suit property. On the contrary, the defendants have produced ample documentary evidence to show that they are having occupancy over the suit property. The plaintiff is not having any prima facie case, nor balance of convenience lies in favour of plaintiff. On refusal of injunction, the defendants will suffer more loss. Therefore, prayed to reject the application.

8. After hearing both parties, the following points are arise for my determination to decide the present application. Accordingly, I have recorded my finding as follows.

Sr. No.	Points	Findings
1.	Whether the plaintiff is having prima facie case ?	No
2.	Whether the balance of convenience lies in favour of the plaintiff ?	No
3.	Whether the plaintiff will suffer irreparable loss by refusing injunction ?	No
4.	Whether the plaintiff is entitled for temporary injunction ?	No

Points no. 1 to 4

9. The points no.1 to 4 are interconnected with each other. Therefore, points no.1 to 4 are discussed commonly. In light of arguments advanced by both parties, I have gone through the pleadings and documentary evidence placed on record. I have also gone through the authority cited by the learned advocate for the plaintiff. After perusal of the authority cited by the learned advocate for the plaintiff, I most respectfully submit that the authority cited by the learned advocate for the plaintiff is not applicable in the present suit. In the aforesaid authority, the Hon'ble High Court of Bombay after taking into consideration, entire evidence and facts it has been held that akharphod patrak can be considered as a document of title and is sufficient to rebut the presumption arising from the mutation entry. The present matter is now pending for hearing on application of temporary injunction. Both parties have yet to be adduced their evidence.

When both parties have adduced their full-fledged evidence. That time, after taking into consideration the evidence placed on record and akharphod patrak, it will be decided that whether the akharphod patrak is sufficient to rebut the presumption arising from mutation entry. Therefore, the said facts cannot be determined at this stage.

10. On perusal of the documentary evidence placed on record, it appears that the plaintiff has filed 7/12 extract of the suit property at Exh.6. On perusal of said 7/12 extract, it appears that names of the defendants no.1 to 3 were recorded as tenants of the suit property vide Mutation Entry No.4652. On perusal of tenant register at Exh.8, it also appears that name of the Gopal Narayan Hadkar and Rukmini Vithoba Hadkar was recorded to the land situated in Survey No.428 Hissa No.12. It is the contention of plaintiff that earlier, the suit property is having Phalani No.12. But the plaintiff has not adduced any prima facie evidence to substantiate that earlier the suit property is having Phalani No.12. The plaintiff has also produced akharphod patrak at Exh.9. On perusal of Exh.9, it appears that in Survey No.42 Hissa No.21, names of the Narayan Bhikaji Nare and Rukmini Vithoba Hadkar were recorded as possessors of the suit property.

11. On perusal of documents filed at list Exh.38, it appears that the defendants have produced electricity bill issued by Mahavitaran. On perusal of said electricity bill, it appears that electricity meter was installed in Survey No.42 Hissa No.21 situated at village Gaudwadi and said electricity meter is held in the name of defendant no.2. From the collective reading of 7/12

extract at Exh.6 and electricity bill at Exh.38/9, it prima facie appears that the defendants are having possession over the suit property. On the other hand, the plaintiff has not produced any prima facie material to show that he is having possession over the suit property. Therefore, I am of considered opinion that the plaintiff is not having any prima facie case. The balance of convenience does not lie in favour of plaintiff. On refusal of injunction, the plaintiff will not suffer any loss. Thus, the application filed by the plaintiff is liable to be rejected. Hence, I answered Points no.1 to 3 in the negative and in answer to Point no.4, I pass following order.

ORDER

1. The application at Exh.5 is rejected.
2. Both parties shall bear their own Costs.

(Pronounced and dictated in open Court.)

Place : Malvan
Date : 11/08/2023

Mahesh R. Devkate
Jt. Civil Judge Jr.Dn., Malvan.