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Order Below Exh 5 in Regular Civil Suit No. 273/2014
(Kadgonda Ningappa Birajdar V/s Sidgonda Ningappa Birajdar)

1. The plaintiff has filed this suit for partition and possession of suit land. The plaintiff has filed present application for temporary injunction restraining the defendant from obstructing his joint possession and enjoyment over suit land till final decision of the suit.

2. Briefly stated facts of the case are as under :-

Block No. 61/1 area 5 Hector, 4 R including well, bore-well, electric motor and pipeline situated at village- Bhivargi, Taluka- Jath, District-Sangli (**here-in-after referred as " Suit Land "**) is the subject matter of the suit.

3. It is contended that, the plaintiff and defendant are real brothers and they are having brothers namely Goudappa, Dhanappa, Suresh and nine sisters. The plaintiff and defendant are having ancestral land at Village Karajangi. In the year 1995, the father of the plaintiff and defendant, has purchased 12 Acres land in the name of Goudappa at Village Karajangi. Prior to it, on 12.4.1990, the father of the plaintiff and defendant has purchased suit land in the name of the plaintiff and defendant from Devappa Gujari. It is contended that, Dhanappa and Suresh were serving in

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Military. Dhanappa has received land of his father-in-law at Village Bhivargi. On 22.3.2010, the plaintiff, defendant and their sisters relinquished their share in land situated at Village Karajangi, in favour of brother Suresh. On 16.2.2012, Suresh has sold 1 Hecter 97 R land to his wife viz. Kalawati by registered sale-deed for consideration of Rs. 2,25,000/-. In this way, the plaintiff and defendant has made arrangement of their land after the death of their father.

4. It is contended that, the plaintiff and defendant are cultivating suit land jointly. They grows sugar-cane, Banana, Maize and Jowar crops in suit land. The electric connection for well is taken in the name of the plaintiff and he is paying electricity charges. It is contended that, in the month of October, 2013, the plaintiff decided to sell 8 Ana share in suit due to his domestic problem however, on 14.10.2013, the defendant published public notice in daily newspaper " Tarun-Bharat " and, therefore, the plaintiff could not sell his land. Prior to it, at the time of Chaitra Padwa in the year 2013, the plaintiff asked partition of suit land but the defendant avoided for the same and did not give separate possession of his share in suit land. It is contended that, due to family problem, it is difficult to the plaintiff to cultivate suit land jointly hence he is constrained to file suit for partition of his one half share. The suit land is not partitioned between the plaintiff

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and defendant. So also, there is entry of common enjoyment over suit land to the revenue record. However, the plaintiff do not want to cultivate suit land jointly. Therefore, when the plaintiff decided to sell suit land, the defendant is claiming his right of pre-emption. Since October, the defendant is obstructing the possession of the plaintiff over suit land. The plaintiff would suffer irreparable loss if temporary injunction is not granted against the defendant. Hence the plaintiff prayed for restraining the defendant from obstructing his possession over suit land till decision of suit.

5. Defendant filed say vide Exh 20. It is contended that, the plaintiff is living at Village- Karajangi, Taluka-Jath and he never cultivated the suit land. Though in the cultivation column of 7x12 extract, there is entries of the name of the plaintiff and defendant, but the plaintiff was/is not having joint or independent enjoyment over suit land.

6. It is contended that, it is mutually decided between the plaintiff, defendant and their brother that, suit land is given to the share of the plaintiff, defendant and land situated at Village-Karajangi is given to the share of Suresh. Suresh was serving in military, hence the plaintiff is cultivating land given to Suresh on say of Suresh. When the relation between the plaintiff and defendant were cordial, the plaintiff has not demanded partition. It

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is contended that, after purchase of suit land, the defendant has made development in the suit land and grown up cash crops. So also, the defendant was giving yield of suit land to the plaintiff. But unfortunately the sons of the plaintiff met with an accidental death.

7. It is further contended that, the plaintiff was going to marry second time as his wife has made operation of family planning. The plaintiff is intending to provide lumpsum amount to his wife. Except suit land, the plaintiff is not having other source. Therefore, it was decided between the plaintiff and Suresh that, Suresh should give his 8 Ana share in land bearing block no. 282 situated at village- Karajangi and an amount of Rs. 10 Lacks to the wife of the plaintiff and the plaintiff should leave right in suit land to Suresh. Out of Rs. 10 Lacs, an amount of Rs. 3 Lacs has paid by the Suresh to the plaintiff. So also, Suresh has given consent to the plaintiff to construct house in block no. 320 situated at Village- Karajangi. Though the plaintiff is having one half share in suit land, the plaintiff has deceived to the State Government by showing his name in list of person below poverty line and availed the benefit of Indira Aawas Scheme. Taking disadvantage of the entry of the plaintiff's name to revenue record, the plaintiff has filed this false suit.

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8. It is contended that, since one year, the plaintiff was quarreling with the defendant hence as decided between them, the defendant has kept eastern side share to the plaintiff and in remaining half portion, the defendant took sugar-cane crop and he was providing sugar-cane to sugar mill. The defendant is having electric connection in his name. The plaintiff has suppressed the real fact from the Court and taking disadvantage of his entry to the 7x12 extract, the plaintiff has taken injunction order. The plaintiff has not come with clean hands before the Court. The plaintiff has constructed house at Village- Karajangi by availing the funds under Indira Aawas Scheme. Hence direction be given for criminal action against him. The plaintiff has filed this false suit to harass the defendant, by suppressing real facts. Therefore, application be rejected with cost.

9. On the basis of pleadings of the parties, following points arise for determination and my findings thereon for the reasons to follow are as under :-

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the plaintiff made out prima-facie case ?	No
2. Whether balance of convenience lies in his favour ?	No

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3. Whether the plaintiff will suffer irreparable loss if injunction is not granted ? No
4. What Order ? As per final order.

REASONS

AS TO POINTS NO. 1 TO 3 :-

10. Learned Counsel for the plaintiff submitted that, suit land is joint property of the plaintiff and defendant. The father of the plaintiff and defendant purchased suit land in the name of the plaintiff and defendant on 12.4.1990. It is further submitted that, the plaintiff and defendant are having joint possession and they are jointly cultivating suit land since long. He further submitted that, in the month of October, 2013, the plaintiff was in need of money hence he decided to sell suit land of his share. However, in order to obstruct the plaintiff from selling suit land, the defendant gave public notice in daily newspaper. In the month of " Chaitra", 2013, the plaintiff demanded partition and separate possession of his share however, the defendant denied for the same and it is impossible for the plaintiff to have joint possession. Hence the plaintiff filed this suit for partition and separate possession of his share and filed this application for temporary injunction restraining the defendant from causing obstruction to his possession and enjoyment. It is further submitted that, the plaintiff

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and defendant are co-owner and there is no partition between them by metes and bounds. In the month of October, the defendant started obstructing his joint possession over suit land. The plaintiff is having prima-facie case. Balance of convenience lies in his favour hence if injunction is not granted, the plaintiff would be suffered irreparable loss. Hence, he prayed for allowing application.

11. Per Contra Learned Counsel Shri. S.K. Potnis for the defendant submitted that, it is not disputed that, the plaintiff and defendant are real brother and suit land is joint property. He further submitted that, there is no partition by metes and bounds. However, prior to one year, as per the arrangement between them, the land of plaintiff's share has been kept at eastern side and defendant cultivating half portion and he has taken crops like sugar cane. He further submitted that, the plaintiff and defendant are co-owner hence injunction as prayed cannot be granted. Accordingly, he prayed for rejection of application.

12. Relation between the parties is not disputed. Further it is not disputed that, suit land is joint property and there is no partition between the plaintiff and defendant by metes and bounds. Thus, it is clear that suit land is joint property of the plaintiff and defendant and, therefore, they are co-owners. It is the

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contention of the plaintiff that, he intended to sell property of his share however, due to the public notice issued by the defendant, he could not sell suit land and the defendant denied partition and separate possession of his share and in the month of October, 2013, the defendant started obstruction to his possession. According to the plaintiff, before the dispute, there was joint possession of the plaintiff and defendant over suit land and since the dispute i.e. prior to one year, the defendant is cultivating half portion towards east side. Hence except oral contention of the defendant, there is nothing on record to that effect. Further in the public notice given by the defendant, it is contended by him that, there is no partition of suit land between he himself and the plaintiff. So also, it is contention of the plaintiff that, there is no partition between them. Hence prima facie it appears that, there is no partition by metes and bounds. Hence, I hold that suit land is joint property of parties.

13. In case in hand, it is not disputed that the plaintiff and defendant are co-owners and it appears that, there is no partition between them by metes and bounds. Hence it can be safely inferred that, the plaintiff and defendant are having joint possession over suit land. Here, I may refer the Judgment of Division Bench of Punjab and Haryana High Court in the case of , " **Bachan Singh V Swaran Singh AIR 2001 PUNJAB AND**

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HARYANA 112. It is held that :-

(i) A co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which is detrimental to his interest.

14. The Hon'ble Punjab and Haryana in the case of " **Sant Ram Nagina Ram V. Daya Ram Nagina Ram A.I.R. 1961 Punj 428** held that -

(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) The possession of the joint property by one co-owner is, in the eye of law, possession of all even if all, but one, are actually out of possession.

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(3) *A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.*

(4) *The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive, but also hostile to the knowledge of the other, as when a co-owner openly asserts his own title and denies that of the other.*

(5) *Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.*

(6) *Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.*

(7) *Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.*

(8) *The remedy of a co-owner not in possession or not in possession of a share of the joint property, is by way of a suit for partition or for actual possession, but not for ejectment. Same is the case where a co-owner sets up an exclusive title in himself.*

(9) *Where a portion of the joint property is by common consent of the co-owners, reserved for a particular common purpose, it cannot be diverted to an inconsistent user by a co-owner; if he does so, he is liable to be ejected and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered.*

15. In the above cited ruling, the Hon'ble Punjab and Haryana High Court held that, the possession of the joint property by one co-owner is, in the eye of law, possession of all even if all, but one, are actually out of possession. In the case in hand, it is the contention of parties that, there is no partition by metes and bounds and, therefore, the possession of the plaintiff and defendant is for themselves and other co-owners. It is well settled that, a co-owner is not entitled for relief of injunction unless due to the act of the co-owner in possession the value or utility of the property is diminished or act of the co-owner in possession are detriment to the interest of other co-owner A co-owner can seek an injunction to prevent such act, which is detrimental to his right and interest. A co-owner has an interest in the whole property and also in every parcel of it. Therefore, the plaintiff and defendant being the co-owners, they both have interest in the whole property and also in every parcel of it. The Hon'ble Punjab and Haryana High Court in above cited ruling also held that, a mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all. In the case in hand, it is contention of the plaintiff that, the defendant is obstructing his joint possession over suit land however in view of the observations laid down by the Hon'ble High Court in above cited ruling, the possession of any one of them deemed to be on behalf of both the

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plaintiff and defendant.

16. Furthermore, it is contention of the plaintiff that, since October, the defendant started obstructing his possession over suit land however, in the plaint, he has not mentioned as to the obstruction by the defendant to his joint possession over suit land. Therefore, considering the nature of property, facts of case and observation laid down by Hon'ble Punjab and Haryana High Court, the plaintiff is not entitled for relief of injunction as prayed. The plaintiff has not contended, how he would suffer irreparable loss if the injunction as prayed is not granted. Hence considering the facts of the case, discussion above made and in view of the observation laid down by Hon'ble Punjab and Haryana High Court, I hold that, the plaintiff has no prima-facie case and balance of convenience not lies in his favour. The plaintiff has not made out case that, how he will suffer loss if injunction is not granted. Accordingly, I answer Point no.1 to 3 in the negative and pass following order.

ORDER

1. Application for temporary injunction below Exh 5 is rejected.
2. Costs in cause.

Place : Jath
Date : 12.2.2015

Sd/-
(S.H. Salunkhe)
Civil Judge Junior Division,
Jath.