

MHSN110011292024



**ORDER BELOW EXHIBIT 5 IN RCS NO.**  
**191/2024**

(Mahesh Dhage Vs. Kiran Dhage & Others)

1] The plaintiff has filed present application under Order 39 Rule 1 and 2 of Code of Civil Procedure Code.

2] It is the contention of the plaintiff that, suit property Gat no. 577 was purchased by Rajaram Pandurang Dhage, father of plaintiff and defendant no. 12. Since the date of purchase, Rajaram Pandurang Dhage was owner and possessor of suit property. Plaintiff and defendant no. 11 was helping Rajaram to cultivate the suit property. Rajaram Dhage died on 24/07/1989. After demise, plaintiff and defendant no. 12 were only legal heirs of deceased Rajaram but Shrirang Dhage, Pralhad Dhage, Dinkar Dhage and Vilas Dhage have falsely recorded their names also as legal heirs along with plaintiff and defendant no. 12 and got sanctioned mutation entry no. 532. Names of defendant no. 1 to 12 are recorded to Revenue Record which are hallow. Defendant no. 1 has started construction of house in the suit property. Defendant no. 1 has obstructed possession of plaintiff over the suit property. Defendants are taking disadvantage of their names having over Revenue Record and making construction over the suit property. In case, defendant succeeds to make construction over the suit property, plaintiff will suffer

from irreparable loss.

3] Entire suit property Gat no. 577 is in possession of plaintiff and defendant no. 12 and they are taking income from that property. It is just and proper to restrain defendants from making construction over suit property. On 23/11/2024, defendant no. 1 to 4 showed their ability to construct house over the suit property. Hence, cause of action arose to file the present suit. Accordingly, the application.

4] Defendant no. 1 to 4 have filed their written statement and say and resisted the application. The defendants have specifically denied all the contentions raised in the plaint. It is the contention of the defendants that, the description given by the plaintiff of the suit property is incomplete and the suit property is not identifiable from the description given in the plaint. From the four boundaries, the suit property cannot be located, in these circumstances, the temporary injunction application is not maintainable. The defendants have specifically denied that, entire suit property Gat no. 577 is in possession of plaintiff and defendant no. 12.

5] It is the case of defendants that, the original ancestor Pandurang Dhage died on 12/07/1968. After demise of Pandurang, name of Rajaram Dhage, Rangnath Dhage, Pralhad Dhage, Dinkar Dhage, Vilas Dhage, Godabai Saste, Gokula Awale, Bayjabai Shinde, Kamal Patil, Suman Jadhav, Sajabai

Shinde and Parubai Dhage were recorded as legal heirs of deceased Pandurang Dhage over the Gat no. 401, 362, 478, 483, 371, 397 and 364. Suit property Gat no. 577 was Joint Hindu Family property of plaintiff and defendants which was purchased in the name of Rajaram Dhage being a Karta of Joint Hindu Family. So, rest of the Gat numbers along with suit property were recorded in the name of Rajaram being a Karta of the properties. The suit property is Joint Family Property of Rajaram and his brothers purchased in the name of Rajaram being Karta of the family.

6] Rajaram Dhage died on 24/07/1989. After demise of Rajaram, oral partition was effected between Joint Family of all the properties along with suit property in Anewari (आणेवारी) and mutation entry no. 532 was sanctioned in Anewari (आणेवारी). Each coparcener have orally partitioned the suit property by Anewari (आणेवारी) with metes and bounds. The partition of suit property 577 and others were effected as east-west and on the western side of Gat no. 577 there is road. North side of Gat no. 577 was allotted to plaintiff and defendant no. 12 admeasuring 0H 34.66R. On the southern side of that share was allotted to predecessor of defendant no. 5 to 10 Shrirang admeasuring 0H 35.55R, to the Southern side of that share, share of Pralhad Pandurang Dhage was allotted admeasuring 0H 35.55R, to the southern side of that share, share of Dinkar defendant no. 11 was allotted admeasuring 0H 34.60 R and on the southern side

of that share predecessor of defendant no. 1 to 4 are allotted to Vilas Pandurang Dhage admeasuring 0H 34.64 R.

7] It is the contention of the defendant no. 1 to 4 that, from the date of oral partition each coparcener is having possession over their allotted portion. Defendant no. 1 to 4 is having ownership and possession over 0H 34.64R which were allotted to their share at the time of oral partition which is on the extreme southern side of Gat no. 577. It is specifically contended by defendant no 1 to 4 that, they are making construction of their house in the portion which was allotted to them in the oral partition. The fact of oral partition is still within knowledge of the plaintiff and defendant no. 12 but they have not disclosed the fact and have not come with clean hands before the Court. It is further contended that, the plaintiff and defendant no. 12 have not challenged the mutation entry no. 532 till date as they have knowledge of oral partition. Plaintiff and defendant no. 12 was having consent for construction of house which can be seen from the photographs in which member of plaintiff's family were present at the time of starting construction. Defendant no. 1 to 4 are in need of a constructed house and in case, the application is allowed, defendant no. 1 to 4 will suffer from irreparable loss. Hence, prayed to reject the application.

8] Considering the rival contentions of both the parties, following points arise for my consideration and I have recorded

my findings thereon along with reasons as follows.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
(i)	Whether the plaintiff proves prima facie case in his favour ?	In the Negative.
(ii)	Whether the balance of convenience lies in favor of plaintiff?	In the Negative.
(iii)	Whether the plaintiff will suffer irreparable loss if the injunction is not granted?	In the Negative.
(iv)	What order ?	As per final order...

### REASONS

#### Point no. i to iii -:

9] As all the points co-relates with each other, they all are taken together for discussion to avoid repetition.

10] The plaintiff has filed 7/12 extract of Gat no. 577, copy of mutation entry no. 532, copy of 7/12 extract of Gat no. 577 for the year 1988-89, 1997-98, copy of 7/12 extract of Gat no. 577 for the year 1998-99 till 2007 to 2008, copy of Gat Map(Nakasha) of Gat no. 577, affidavit of Rahul Pralhad Dhage, copy of sale deed of Survey no. 162/1, copy of 7/12 extract of 9(3) 9(4), affidavit of Shalan Shrirang Dhage, affidavit of Akshay Anil Dhage, affidavit of Prabhakar Jagannath Shinde,

affidavit of Vitthal Krushna Edge, affidavit of Rangnath Jaysing Shinde, copy of bill in the name of Mahesh Dhage dated 25/08/2019 to show that pipe line was fixed by plaintiff. Photographs of suit land, 7/12 extract no. 1 consolidation book, Survey no. 162/1 was converted into Gat no. 577. On the other hand, defendants no. 1 to 4 have filed copy of mutation entry no. 1363, photographs that member of plaintiffs were present at the Bhumipujan/groundbreaking ceremony, affidavit of Dinkar Pandurang Dhage (defendant no. 11), 7/12 extract of Gat no. 401, 36, 364, 397, 371, 483, 478 and Gat no. 362, online map of Gat no. 577, affidavit of Madhukar Jaysing Dhage, 7/12 extract of Gat no. 567 which is owned by Madhukar Jaysing Dhage.

**11]** It is argued by plaintiff that, the suit property 577 was self acquired property of their father. He was owner and possessor of suit property. After demise of Rajaram, brothers of Rajaram taking disadvantage of plaintiff being minor have mutated their names as a legal heirs falsely. In fact, plaintiff and defendant no. 12 are the only legal heirs of deceased Rajaram. Taking advantage of this fact, defendant no. 1 to 4 have started construction over the suit property. Defendant have admitted that, suit property is registered document in the name of Rajaram. Defendants have admitted the sale deed in the name of Rajaram. What is the status of property, whether it was a self-acquired or joint family is part of evidence. Defendants have also

admitted my possession. The defendants have taken defence of previous partition but there is no evidence filed on record in that regard. There is no recitals in sale deed that, suit property is purchased in the name of Rajaram as a Karta of Joint Family. At the time of consolidation, Rajaram became the single holder/owner after verifying actual possession of Rajaram over the suit property. It is not a joint family property. Rajaram have mortgage the Gat no. 577 to Bhuvikas Bank. Defendants have falsely involved suit property along with rest of the ancestral properties after demise of Rajaram. There is no documentary evidence with defendants to give go by to the title of Rajaram.

**12]** It is further argued that, what shares given to the daughters have not been explained by the defendants in their pleadings. There is no effect of partition in the revenue record as pleaded by defendants. The defendants cannot make oral partition of the suit properties. It is specifically submitted that, Anewari (आणेवारी) does not mean partition. The status is under challenged of suit property, hence there is triable issue on the part of the plaintiff and thus, plaintiff has prima facie case. In case, defendant succeeds to construct the suit property, plaintiff will suffer irreparable loss. Hence, right of plaintiff be protected to avoid complication and multiplication in the litigation. Hence, prayed to allow the application.

**13]** On the other hand, Advocate for defendant K.D. Bhingé argued that, Rajaram was Karta of family. The name of

Rajaram was recorded to all ancestral properties as Karta. Advocate has relied upon the 7/12 extract filed of all ancestral properties. City Survey no. 162/1 is admeasuring 1H 86R as per sale deed and extract of 9(3) 9(4) of Gat no. 577 shows it is City Survey no. 162/4 admeasuring 1H 75R which is allotted as Gat no. 577. Plaintiff has not brought on record copy of sale deed of City Survey no. 162/1 because the property is not identifiable. The extract of 9(3) 9(4) is not matching with the suit property.

**14]** It is argued that, the year 1990 oral partition was effected and all properties were partitioned by Anewari (आणेवारी). After oral partition, property was separated and each one was cultivating their share. After the year 1988-1990, name of Rajaram Dhage, Shrirang Dhage is seen on 7/12 extract. After demise of Rajaram, name of Shrirang can be seen. There is specific pleading that, how was the partition effect and till date plaintiff and defendant no. 12 have not obstructed possession of any coparcener. At the time of consolidation, Rajaram was alive and his name was recorded in the capacity of Karta. Plaintiff has not shown on which place defendants are making construction. The defendants are in possession from long period. Defendants are making construction in their land and share of defendant no. 1 to 4 is on the extreme southern side of Gat no. 577. In case, application is allowed, defendant no. 1 to 4 will suffer from irreparable loss. Defendant no. 1 to 4 is not having any home to reside. Defendant has filed affidavit of Dinkar who is alive and

brother of deceased Rajaram. Hence, prayed to reject the application. The defendants have relied upon 2008 AIR (SC) 2033 Anatulla Sudhakar Vs. P. Buchi Reddy (dead) By LR's & others and 2008 (4) All MR 932 (SC) – Mandali Ranganna and Others Vs. T. Ramchandra & Others.

15] I have gone through the pleading and documents filed on record. It is pertinent to note here that, the suit is not filed for partition and separate possession. The suit is filed for simplicitor injunction, on the basis of sale deed. Plaintiff and defendant no.12 is seeking perpetual injunction against defendants more particularly temporary injunction against defendant no. 1 to 4. It is the specific contention of plaintiff that, plaintiff and defendant no. 12 are in possession of entire Gat no. 577. It is settled principle of law that, in suit for perpetual injunction, the plaintiff has to prove his possession over the suit property till date of filing suit and at the time of deciding temporary injunction application, prima facie possession of plaintiff over the suit property has to be proved. On the other hand, it is the specific case of defendant no. 1 to 4 that, father of plaintiff Rajaram being Karta, suit property was purchased in the name of Rajaram as a joint family property and after demise of Rajaram all the properties were partitioned along with Gat no 577. As per oral partition, each coparcener has given equal share and every coparcener is in possession in east-west direction till date. Plaintiffs are also allotted with specific portion to the

eastern side of suit property. The execution of sale deed is admitted by defendant. Whether the suit property was purchased in the capacity of karta or it was a self-acquired property is the issue which to be decided after recording evidence. At present, prima facie possession of plaintiff over entire Gat no. 577 has to be seen.

**16]** It is pertinent to note here that, on perusal of sale deed it is Survey no. 162/1. On perusal of documents filed by plaintiff which is consolidation extract which shows, the predecessor in title Ganpati's property was exchanged and it was allotted as Gat no. 577. The sale deed is of the year 15/04/1976. It is pertinent to note here that, all the pleadings and transactions were prior to 1989. It is pertinent to note here that, on perusal of rest of Gat number's 7/12 extract, it can be seen that, the name of Rajaram was recorded to all Gat numbers in the capacity of Karta. This prima facie shows that, at the relevant time, Rajaram was Karta of family and probability cannot be ruled out at this stage that suit property was purchased by Rajaram in the capacity of Karta being a joint family property. Considering this probability and in absence of specific pleadings of source of income of Rajaram about self-acquisition at the hands of Rajaram, prima facie it can be said that, it was joint family property.

**17]** It is pertinent to note here that, the possession were separated after 1989 means after demise of Rajaram and after

sanctioning of mutation entry no. 532. The possession of plaintiff over entire suit property has to be seen minutely after 1990. On perusal of mutation entry no. 532 which was sanctioned on 23/06/1990 wherein names of all defendants are recorded as legal heirs of deceased Rajaram. In fact, if the properties was self-acquired property of Rajaram by no stretch of imagination after demise of Rajaram names of his brother could be recorded as legal heirs of Rajaram. It is pertinent to note here that, all the properties are mentioned in that mutation entry along with suit property. It is very material to note here that, till the date of filing suit, there is no documentary evidence filed on record which shows that, plaintiff and defendant no. 12 have challenged the mutation entry till date for the best reasons to known to plaintiff.

**18]** This may infer that, plaintiffs have admitted that, rest of the defendants are legal heirs of deceased Rajaram, after his demise as the property were joint family property. There is absolutely prima facie no evidence on record that, the entire Gat no. 577 is in possession of plaintiff and defendant no. 12 till date of filing suit. On the contrary, the 7/12 extract, more particularly, the ownership column and possession column after 1990 shows that, names of all defendants are recorded in column of ownership and other rights and name of Shrirang is recorded Shrirang, Pandurang, Pralhad in the possession column as they are possession in Gat no. 577. This documentary

evidence of possession falsify the pleadings of plaintiff that, they are in possession of entire suit property Gat no. 577. On perusal of 7/12 of Gat no. 577 defendant's share is shown separate as an owner of the property.

**19]** It need not be stated here that, from the entries in the revenue record in the column of ownership, defendants will not be the owners of the properties. Considering the pleadings of separate possession which has been acted upon till date shows that, plaintiff was allotted with separate share. The 7/12 extract also shows that, Mahesh Dhage, plaintiff is owner and possessor of 0.17.32R and is brother defendant no. 12 is owner and possessor of 0.17.34R. This bifurcation of suit property between plaintiff and defendant 12 has not been explained by plaintiff in their pleadings for the best reasons known to them. Prima facie, this shows that, plaintiff is owner and possessor of 0.17.32R. Moreover, plaintiff has failed to prove that, defendant no. 1 to 4 are making construction in their land.

**20]** The plaintiff has filed an affidavit of one Rahul Pralhad Dhage who is a cousin of plaintiff. He has stated that, on entire Gat no. 577, there is possession of plaintiff. On perusal of 7/12 extract, the property is standing in the name of Pralhad Pandurang Dhage who is father of deponent. There is no explanation by the deponent in what capacity his father is in possession of Gat no. 577 as a co-sharer, where the plaintiff is claiming possession over entire Gat no. 577. On the other hand,

affidavit filed by defendant, more particularly of Dinkar Pandurang Dhage who is defendant no. 11 and who is real brother of deceased Rajaram who has stated that, after demise of Karta Rajaram, they have amicably made oral partition and plaintiffs were allotted with specific separate portion such as defendant no. 1 to 4 and others. Everyone is cultivating their share at present.

**21]** On perusal of affidavit filed by Madhukar Jaysing Dhage who is owner of Gat no. 567 which is adjacent to Gat no. 577 which can be seen from the online Gat map and 7/12 extract who has deposed that, Gat no. 577 was ancestral property and it was orally divided by Anewari and everyone is in possession of their allotted portion. As compared to affidavit of Rahul Dhage, the facts stated by Madhukar Dhage and Dinkar Dhage on affidavits seems to be more probable and which could be prima facie said that, there is separate possession of plaintiff and defendant no. 1 to 4 which corroborates to the pleadings of defendants.

**22]** From these evidence, it can be seen that, plaintiff is in possession of their allotted portion and now he is restraining defendant from making construction over their allotted portion only on the basis of title document of sale deed standing in the name of his father. The silence of plaintiff by not challenging mutation entry no. 532 since 1990 till date, the separate Anewari possession of each coparcener in Gat no. 577 which has

not been challenged by plaintiffs, the possession was not obstructed by plaintiffs and others this conduct and acquiescence of plaintiff does not entitle plaintiff to grant any relief of temporary injunction. The plaintiff has miserably failed to prove their possession over entire Gat no. 577 as pleaded, hence, plaintiff has failed to prove prima facie case in their favour and balance of convenience lies in their favour. In case, the application is rejected, plaintiff will not suffer any irreparable loss.

**23]** Considering all these facts and circumstances, I answer point no. I to iii in negative and point no. iv I proceed to pass following order.

### **ORDER**

- 1) Application Exhibit 5 stands rejected.
- 2) Needless to state here that, the status quo order passed on exhibit 18 dated 07/12/2024 stands vacated.
- 3) Plaintiff to bear cost of application.

(Pronounced and Dictated in open Court)

Date:- 19/12/2024  
Atpadi

(R.B. Kulkarni)  
Jt. Civil Judge Junior Division  
Atpadi, Dist- Sangli

<b><u>CERTIFICATE</u></b>	
I affirm that the contents of this PD.F. file Order/Judgment is same word for the word as per original Order/Judgment.	
Name of Steno	:- Shri. A.R. Jadhav, Steno (Grade-3)
Court Name	:- R.B. Kulkarni Jt. CJJD & JMFC, Atpadi, Dist- Sangli
Date of Order/Judgment	:- 19/12/2024
Signed by PO on	:- 20/12/2024
PDF uploaded on	:- 20/12/2024