

ORDER BELWO EXH. 5

Daji Sripati Lawate etc. 2

Plaintiffs**Vs.**

Shrimant Udayan Maharaj Pratapsingh Bhosale etc. 4

Defendants

Present suit is filed for permanent injunction and present application is filed for temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

02. Brief facts of plaintiffs' case are as under :-

A} Gat No. 559/37/4 situated at village Lotewadi, Tal. Sangola, Dist. Solapur ad-measuring area 9 H. 88 R. and *potkharaba* 31R. Out of that 2H. 47R, *potkharaba* 8R in common having boundaries as following -

East	-	Remaining land in Gat No. 559/37/4
West	-	Gat No. 559/36
South	-	Gat No. 559/35
North	-	Gat No. 559/38

And right of water in well in gat no.559/37/4,36x36 ft. tin sheet shed with three rooms, 30x125 ft. shed of animals, 3bore wells with electric motors.

B} Gat No. 559/36 situated at village Lotewadi, Tal. Sangola, Dist. Solapur ad measuring area 14 H. 58 R. and *potkharaba* 1 H. 21 R. Out of that 3H. 94.75R, having boundaries as following -

East	-	Remaining land in Gat No. 559/36
West	-	Gat No. 559/41
South	-	Gat No. 559/34
North	-	Gat No. 559/38

And well and bore well with electric motor of plaintiff no.2

(These landed properties are hereinafter referred as 'suit properties')

for the sake of brevity).

03. The plaintiffs contended that, suit properties are owned and possessed by family of defendant no. 1. The defendant no. 2 is power of attorney holder of family of defendant no. 1. The defendant no. 1 has sold suit property 1A to plaintiff no. 1 and suit property 1B to plaintiff nos. 1 and 2 through their power of attorney i.e. defendant no. 2 on 29/09/2006 for proper consideration. The defendant no. 2 has executed registered sale-deeds and delivered actual possession to plaintiffs on the date of sale-deeds. From that date plaintiffs are in possession of suit property. On the basis of sale-deeds mutation entries have been recorded and from that date defendants have no possession over suit property.

04. Plaintiffs further contended that suit property was arable land. The plaintiffs developed suit property. They constructed, 10 bore-wells, they constructed tin-sheet shed in that property. Today they have taken crop of pomegranate and corn. Plaintiff no. 1 has spent and invested their whole life and money at about Rs. 13 lakhs for developing suit property and to make it horticultural. Plaintiff no. 2 has taken well and motor connection in suit property 1B. He has constructed tin-shed on it. He has taken crop of pomegranate in it.

05. In such circumstances, some persons of their village having ill-will against them have instigated defendant no. 1, his mother and his sister to take action against plaintiffs. Defendant nos. 3 and 4 do not understood them. The defendant no. 1 has political pressure on police department. They can evict plaintiffs from suit property, using their political pressure. They have canceled entries of plaintiff's from record.

06. On 26.11.2018 the defendant no. 3 tried to threaten plaintiffs

through their agent. If, plaintiffs are evicted without following due procedure of law, it will cause injustice to plaintiffs right and will cause irreparable loss which cannot be reimbursed in money. Therefore, they have filed present suit for injunction against defendants. For disposal of the suit it will take long time till then defendant must be restrained from dispossessing plaintiff.

07. The defendant no. 1 has given say at Exh. 16 and defendant nos. 3 and 4 have given pursis at Exh. 29 adopting say of defendant no. 1. The defendants denied contents in suit and in application in toto. They further contended that, sale-deeds dated 29/09/2006 is totally fraudulent. Actual market price as mentioned in sale-deeds is Rs. 2,75,000/- and Rs 2,00,000. The defendant no. 2 has caused fraud. The defendant no. 1 never received the amount of consideration of sale-deeds. The plaintiffs do not get any right over the suit property which has been received by fraudulent transaction.

08. They further contended that suit property is '*Saranjam Inam*'. Therefore, this property can not be transferred without permission of the competent authority. The sale-deeds have been executed without such permission. Hence, it is illegal and void ab initio. The defendant no. 1 never signed on power of attorney executed in favour of defendant no. 2. Moreover, in power of attorney right to transfer or sale, execute sale-deeds or receive consideration of sale-deed are not mentioned. Therefore, defendant no. 2 did not get right to execute sale-deed of suit properties on behalf of defendant no. 1. Therefore, ownership or possession of suit property can not be transferred as per law.

09. Moreover, on 7/12 extract of suit property name of defendant nos. 3 and 4 exist in column of owner. But, on sale-deeds signature of

defendant nos. 3 and 4 do not exist. It has been mentioned in sale-deeds that, defendant no. 1 is power of attorney of defendant nos. 3 and 4. But, power of attorney of defendant nos. 3 and 4 executed in favour of defendant no. 1 is not attached with sale-deeds. Therefore, the defendant no. 2 had no right to execute sale-deeds behind back of defendant nos. 3 and 4, and these documents can not create rights of plaintiffs over suit property. Further, in sale-deeds property 'In common possession' is mentioned. As per Vatan Law such property can not be partitioned or fragmented with third party. Therefore, such transaction also hit by provision of Vatan Law.

10. They further contended that, on 02/05/2018 vide C.R. No. 348/2018, the offence of forgery has been registered against defendant no. 2 and his son. The charge-sheet of concern FIR has been filed. Moreover, the entries of plaintiffs on suit properties have been found to be fraudulently made and said entries have been cancelled vide mutation entry no. 1570 and 1568. Accordingly, name of defendant nos. 1, 3 and 4 have been taken on record. It shows that, plaintiffs have no possession over suit properties. Plaintiffs had to pray for possession but without such prayer suit is not maintainable.

11. They further contended that, plaintiffs and defendant no. 2 have filed the suit in collusion. The sale-deeds being fraudulent, if vendor had no right of sale, he can not give or transfer ownership and possession by such sale-deeds. The prayer of fraudulent person can not be allowed. Plaintiffs are failed to prove their possession or ownership on suit property. Therefore, interim injunction can not be given against defendant nos. 1, 3 and 4. Hence, prayed to reject application.

12. The Defendant no. 2 has given written statement and say at

Exh. 43. He admitted the contents in suit and in present application. He contended that defendant no. 1 is owner of the suit properties. Therefore, defendant no. 1 appointed power of attorney to him vide registered deed. He has sold suit properties on 29/09/2006 for consideration to plaintiffs. He has executed sale-deeds as power of attorney of defendant no. 2 and has given consideration of sale-deeds to defendant no. 1. Accordingly, mutation entry has been entered. After purchasing suit property, plaintiffs have invested lakhs of rupees in developing suit property. He never obstructed possession of plaintiffs. Therefore, prayed to reject application only on his behalf.

13. In view of pleadings, submissions of learned Advocate for the plaintiffs and defendants, following points arise for determination and I have recorded my findings thereon for the reasons discussed below:

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether plaintiffs have prima facie case?	Yes.
2	Whether plaintiffs have balance of convenience?	Yes.
3	Whether irreparable loss will be caused to plaintiffs, if injunction is not granted?	Yes.
4	What order ?	As per final order

REASONS

As to point nos. 1 to 4 -

14. Plaintiffs have produced following documents in support of their contention.

<u>Sr. No.</u>	<u>Description</u>	<u>Exh.</u>
1.	7/12 extract of suit property.	8 and 9

2.	Original sale-deeds of suit property dated 29/06/2006	49/1 and 49/2
5.	MSEB light bill	49/3
6.	Affidavits of witness	49/6 to 49/08
7.	Certified copy of Power of attorney executed by defendant no. 1 in favour of defendant no. 2.	51/1
8.	Affidavit of Shrimant Udayan Maharaj Bhosale before notary dated 15/11/2019.	56/1

15. Defendants have relied on following documents and case laws which have been discussed with reason at relevant places.

<u>Sr.No.</u>	<u>Description</u>	<u>Exh.</u>
1.	Index No. 3	46/2
2.	Current 7/12 extracts of suit properties.	23/1 and 23/2
3.	Certified copy of mutation entry no.1568 and 1570	23/3 and 23/4
4.	Certified copy of judgement of R.C.S. 518/18	54/1
6.	Remand yadi of C.R. No. 348/18 of Sangola Police Station.	54/2

16. Ld. Advocate Shri. J.A. Dhere argued on behalf of plaintiffs that the sale-deeds have been executed and registered on 29/09/2006. Accordingly, name of plaintiffs have been taken on record in the year 2006. The defendants filed objection to sub-divisional office, Mangalwedha in the year 2018. After decision in appeal without giving opportunity of challenging that decision, names of defendant nos. 1, 3 and 4 have been taken on record on very second day of said decision. Therefore, plaintiffs filed writ petition in Hon'ble High Court. Hon'ble High Court ordered that

plaintiffs can not be dispossessed only relying on entries on 7/12 extracts of suit property.

17. He further argued that defendants taken objection after 13 years of entries of plaintiffs. In SCS No. 16/2003 pending in Senior Division at Satara District Court, defendant no. 1 and 3 have given say in which they have stated that, total vatan properties are acquired to elder son therefore other persons do not have right or share in that property. Therefore, defendant nos. 3 and 4 can not say that they have interest in suit property. Defendant no. 1 and 3 are bound by their own pleading in that suit. In support of argument he relied on **Basantsingh Vs. Janakisingh, Kishandharisingh AIR (SC), 1967, 341,** in this case Hon'ble Supreme Court held that, *'effect of admission in pleading is binding on the parties, making such admission in all subsequent proceedings.'* However, defendant no. 1 is only owner of suit properties. He further argued that, he has executed registered power of attorney in favour of defendant no. 2. The plaintiffs have purchased suit properties relying on power of attorney for consideration. Plaintiffs have not to see whether defendant no. 1 received consideration or not. Defendants can claim for consideration against defendant no. 2. The contention of the defendant that power of attorney is illegal can not be presumed without evidence in that respect. At this stage documentary proof produced by plaintiffs can not be neglected without any proof of defendants in support of their contention.

18. He further argued that, defendant no. 2 has given written statement in favour of plaintiffs and stating actual position. Now, defendant can not take defence that sale-deeds have been executed without permission of Collector, because, one can not be allowed to take advantage of his own wrong. Plaintiffs are in settle possession with ownership. Their possession has been obstructed by defendants. Therefore, they need not to

pray for declaration. In support of his argument he relied on **Ramegowda (D) By LR Vs. M. Vardappa Nayadu (D) by LR, 2004 AIR (SC), 4609**, in this case Hon'ble Supreme Court referred and accepted view taken in *Fakirbhai Bhagwandas and anr Vs. Mangallal and Haribhai and anr (AIR, 1951 Bom, 380)* 'that it is not necessary for the person claiming injunction to prove his title to the suit land. It would suffice if he proves that he was in lawful possession of the same and that his possession was invaded or threaten to be invaded by a person who has no title thereof.' And **Chandrashekhar Shankarrao Kulkarni Vs. Rahul Shikshan Prasarak Mandal, 2007 (3) Bom. C.R. 181** in this case Hon'ble High Court held that, 'it is sufficient if person seeking perpetual injunction proves his possession over the suit property on date of filing of suit referable to some lawful right. In that case decrees for perpetual injunction can be granted.' Therefore, he submitted that, in such circumstances when plaintiffs have purchased property for consideration having possession over suit property, if application not allowed plaintiffs will suffer irreparable loss. Prima facie case is in favour of plaintiffs. Therefore, balance of convenience is in their behalf. Hence, prayed for injunction against defendants.

19. Ld. Advocate Shri. A. Y. Badave argued on behalf of defendant nos. 1, 3 and 4 that, in power of attorney only two properties are mentioned subsequently other properties have been added in it. The investigation officer observed during investigation and his observation to that effect has been mentioned in remand report. The plaintiffs have not produced original power of attorney on record. Therefore, adverse inference has to be drawn against them. He further submitted that the owners do not get consideration of sale-deeds. Plaintiffs have no document to show their settled possession. Affidavits of interested persons can not be considered. He further argued that, the light bills are not proof of lawful title. The whole pleading of the plaintiff is against defendant no. 3. Hence, cause of

action is not tenable. Plaintiffs deliberately have not produced current 7/12 extract of suit property. The document created without following law is void. Under Section 72, 74 and 76 of Indian Evidence Act certified copies can not be treated as evidence when original can be produced. Written statement filed by defendants before Senior Division at Satara can not be useful in this matter, unless proved under section 58 of Indian Evidence Act. Fraudulent person can not be protected by law.

20. Moreover, he submitted that only factum of possession need not be seen. Invalid title, document and possession can not be protected. The developments on suit property are made by defendants. The affidavits of persons filed by plaintiffs have no legal value under Order 19 Rule 1 to 3 of the Civil Procedure Code. The cross of persons who have filed affidavits must be taken. Therefore, affidavit is not evidence. The defendant himself did not enter transaction. The defendant no.2 has committed forgery. In that respect criminal proceeding has been filed against him. On perusal of sale-deeds it clears that, power of attorney in favour of defendant no. 1 executed by defendant nos. 3 and 4 is not attached with it. If application allowed rights of defendant nos. 3 and 4 will be infringed. As per Vatan Act these properties can not be transferred, partition or fragment or sold. Therefore, the transaction is void ab initio. Hence, prayed to reject application.

21. It is the contention of the plaintiffs that they have purchased suit properties from power of attorney of defendant no. 1 in the year 2006. From the date of sale-deeds they are in possession and ownership of the suit property. In the broad category of prima facie case, it is imperative for the court to carefully analyse the pleadings and the documents on record and only on that basis the court must be governed by the prima facie case. Pleadings and documents play vital role.

22. In support of their contention plaintiffs have produced 7/12 extracts of suit properties. These documents show that, their names exist on record as owners vide mutation entry nos. 1008 and 755. Moreover, plaintiffs have produced original sale-deeds dated 29/09/2006. From plain reading of sale-deeds it clears that, sale-deeds are executed in favour of plaintiffs by power of attorney i.e. defendant no. 2 on behalf of defendant no. 1 Shrimant Udayan Maharaj Pratapsingh Bhosale, defendant no. 4 Rajkumari Manisharaje Pratapsingh Bhosale and defendant no. 3 Kalpanaraje Pratapsingh Bhosale. The consideration mentioned is Rs. 2,75,000/- and 2,00,000/-. Along with sale-deeds 7/12 extract of property are attached. On these extracts names of defendant nos. 1, 3 and 4 exist. It shows that these properties were owned and possessed by defendant nos. 1, 3 and 4 in common. Moreover, power of attorney is attached with sale-deeds. It reveals from power of attorney that it has been executed and registered in favour of defendant no. 2, Uttam Maruti Khandekar by defendant no. 1 for him and on behalf of defendant nos. 3 and 4 as their power of attorney. It further reveals that right to sell or alienate or execute sale-deeds or receive consideration of sale-deeds are not given to power of attorney.

23. On this point Ld. Advocate for defendant argued that, the sale-deeds are void ab initio. Hence, ownership is not transferred by such void sale-deeds. Therefore, without lawful documents showing lawful possession injunction can not be granted against defendants. In support of his argument he further relied on **Surekha Sakharam Washiwale Vs. Nanoba Dhondiba Bharekar, All M.R. 2014 (7), 787**, in this case Hon'ble Bombay High Court referred and accepted view taken in Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Anr, 2009 (7) SCC, 363 that, '*the validity and effect of transaction based upon the power of attorney through such power*

*of attorney needs to be tested and the fact of sale just can not be accepted, when the doubts and materials are place on record to show about the misuse and misdeed, based upon the same power of attorney'. At this stage we are to see prima facie case. There is no need to discuss about merits of the case. Hence, case law is not applicable at the present stage. He further relied on **Shri. Mallappa Shivling Nandani Vs. Shri. Bhushan Prakash Risbud, MLJ 2016 (3), 618** in this case Hon'ble Bombay High Court held that, 'if a party is guilty of misleading the court and has not disclosed relevant and material facts, his proceeding may be dismissed at the threshold without considering the merits of the claim'. In present case considering pleading of plaintiffs and defendants it can not be concluded that, plaintiffs have suppressed material facts relevant to this case. Hence, this case law do not apply here.*

24. The fact of sale-deeds is not denied by the defendants. Written statement and say given defendant no. 2 is in favour of plaintiffs. Ld. Advocate for defendant nos. 1, 3 and 4 argued that the power of attorney is forged document. Defendant nos. 3 and 4 did not execute power of attorney in favour of defendant no.1 and defendant no. 1 never executed power of attorney in favour of defendant no. 2 for execution of sale-deeds. Therefore, said transaction executed by defendant no. 2 is void in law, because at the time of sale-deeds he had no right to transfer or alienate property or its possession. Therefore, purchaser does not get right. In support of his argument he relied on **Sopan Sukhdeo Sabale Vs. Assistant Charity Commissioner, SCC 2004 (3), 137** Hon'ble Supreme Court and **Thomas Cook (INDIA) Ltd. Vs. Hotel Imperial, LAWS (DLH) 2006 (1), 2** Hon'ble Delhi High Court in these cases Hon'ble respective courts held that, *"it is settle law that, no injunction can be granted against the owner at the instance of a person in unlawful possession. A person who was a trespasser in possession could not seek injunction against true owner. Judicial proceedings*

can not be used to protect or to perpetuate a wrong committed by a person who approaches the court.” In present case prima facie it reveals that there are registered sale-deeds executed in favour of plaintiffs. Moreover, it is the pleading of the plaintiffs that, they are in possession of suit property vide sale-deeds for more than 13 years. There is no counter claim. Yet, invalidity of sale-deeds is not proved. At this stage from the documents on record we can not presume that plaintiffs are doing something wrong or in unlawful possession. Hence, this case law is not applicable in present situation.

25. To more clarify possession of plaintiffs over suit property, they have produced light bill and affidavits of adjacent land owner. On perusal of these documents it reveals that, plaintiffs have electricity connection in their name on suit properties. Plaintiffs have produced electricity bill of consumer no. 340450000235. This bill is on the name of Shri. Navnath Pujari in respect of connection in Gat No. 559/26. The light bill is given in respect of connection in suit properties. If, plaintiffs are not in possession of this property they could not get these documents. Moreover, plaintiffs have filed affidavits of adjacent land holder namely Balu Yashavant Javir, Vishnu Tatu Javir and Shankar Dnyanu Javir. It has been mentioned in their affidavits that they are permanent residents of village Lotewadi. Their gat numbers are adjacent to the suit properties. It has been further mentioned that suit properties are possessed and owned by plaintiffs vide sale-deeds. They have constructed shades, borewell, pipe line and have taken crop of pomegranate, corn etc. in suit property. Plaintiffs have invested their life and lot of money in development of these properties. The contents of affidavits are in support of plaintiffs. To more support the contention of plaintiffs they have produced affidavit of Chh. Shri. Udayanraje Bhosale before notary dated 15/11/2019. In this affidavit it has been mentioned that, he has executed power of attorney on 22/05/2005 for himself and on behalf of his mother and his sister in favour of Uttam Maruti Khandekar in

respect of their landed properties situated at village Lotewadi, Tal. Sangola namely 559/62, 559/23 and 559/24. Thereafter, he has added Gat No. 559/29, 559/57, 559/54 and 559/53 and has given right of sale-deed and to hand over possession to power of attorney. Moreover it has been mentioned that, he and his fourth fathers have permitted their servants and employees to built up houses on Gat No. 559/18 and 559/17. Accordingly they have constructed houses at their own cost and are residing in those houses through this affidavit he admitted all transaction, sale-deeds in respect of this properties.

26. Ld. Advocate for defendants argued that, the developments in suit property have been made by defendants. They have invested lots of money in suit property. Plaintiffs have no possession on suit property. Moreover, he argued that affidavits can not be read as evidence under section 19, cross must be taken. Plaintiffs have filed affidavits in support of their contention. On the contrary defendant no. 3 also file affidavit in support of their contention in written statement. At this stage there is no requirement to take cross of concern persons because yet evidence is not started. The defendants have not produced any document showing their possession over suit property. Moreover, defendants have not given any proof to dispute these documents. Admittedly, on 7/12 extracts of suit property name of defendant nos. 1, 3 and 4 have been entered. But, above documents showing possession of plaintiffs can not be overlooked. Therefore, there is no ground to disbelieve or have doubt about genuineness of these documents showing possession of plaintiffs. I do not consider that plaintiffs should be expected to produce more evidence to prove his prima facie possession.

27. Considering nature of present application at this stage we have to see prima facie possession over suit property. Defendant nos. 1, 3 and 4

have contended that, sale-deeds is void and power of attorney is not legal. The original sale-deeds are on record. These sale-deeds are registered in the year 2005. It shows that 13 years has gone from registering sale-deeds. Moreover, plaintiffs have produced certified copy of power of attorney from sub-registrar office, Satara on perusal of said, it reveals that suit properties have been mentioned in it. The contentions and allegations of forgery of above defendants are against defendant no. 2 and not against plaintiffs. These contentions will be proved after full-fledged hearing. At this stage merit of these documents can not be discussed without having evidence in that respect. Till then for the protection of the property and interests of plaintiffs necessary order has to be passed.

28. Ld. Advocate for defendant have relied on rulings of Hon'ble Supreme Court and Hon'ble High Court as follows in support of his argument he relied on **Ramkrishna Ganpatro Jogdand Vs. Kondiram Jaysingrao Naikwade, All M.R. 2001 (3) 441**, in this case Hon'ble Bombay High Court held that, *'There is clear exposition of law that, no assistance can be rendered to the plaintiffs who themselves were aware that sale-deeds were void and invalid.'* In present case there is no question or issue whether sale-deeds are void or invalid. Moreover, there is no prayer about sale-deeds. The issue may be considered at final hearing if required, considering pleadings of parties. Hence, above cited case law is not helpful to defendant.

29. **Narayan Kisan Gade Vs. Machindranath Kundlik Tarade, B.C.R., 1994 (2). 61**, In this case Hon'ble (Aurangabad Bench) High Court held that, *'the plaintiff who paid money or handed over property pursuant to an illegal or immoral contract, can not recover it as the courts will not assist an illegal transaction in any manner'*. In present case there is no pleading of either party about transaction of sale-deeds or else by plaintiff being illegal

or immoral. These pleadings may be considered at final hearing. Therefore, above cited case law is not relevant to the matter.

30. **Shamlal Vs. Rajindra Kumar, LAWS (DLH), 1994, (8), 55** Hon'ble Delhi High Court held that, '*merely because the plaintiff was employed as a servant, a Choukidar to look after the property. It can not be said that he had entered in to such possession of the property as would entitle him to exclude even the master from enjoying or claiming possession of the property or as would entitle to him to compail the master staying away from his own property.*' In present case plaintiff has pleaded that, they are in possession of suit property vide sale-deeds and they do not pleaded their possession as servant interested with a job of watching and warding and taking care of the suit property. Hence, the above cited case law is not applicable here.

31. **Maria Margarida Sequeria Fernandes Vs. Erasmo Jack De Sequeria, AIR, (S.C.) 2012, 1727,** Hon'ble Supreme Court held that, no one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property. At this stage will have to consider whether plaintiffs have prima facie possession or not. This question has to be decided relying on pleading and documents on record. There is no necessity to inquire about title. Hence, at this stage the citation is not helpful to defendant.

32. In **Southern Roadways Ltd., Madurai represented by its Secretary Vs. S.M. Krishan, SCC, 1989 (4), 603,** Hon'ble Supreme Court held that, '*agent held the principal's property only on behalf of the principal. He acquires no right, interest, for himself in such property. His possession is of the principal for all purposes*'. In present case there is no pleading about

relation as principal and agent. Therefore, this case law can not be referred here.

33. In **Kaliaperumal Vs. Rajagopal, AIR (SC) 2009, 2122** Hon'ble Supreme Court held that, '*the parties really intended that, title of ownership to the suit properties would pass to the purchaser only after payment of full consideration by the purchaser to the vendor as a condition precedent. Parties did not intend that, their should be transfer of ownership merely on execution and registration of the deed*'. In present case plaintiffs has pleading that the consideration as mentioned in sale-deeds has been transferred to power of attorney. Moreover, power of attorney i.e. defendant no. 2 has admitted that the amount of sale-deeds has been received. Hence, it can not be said that vendor has not received consideration. On the contrary the ratio can be taken to support defendants' case, as vide sale-deeds title of ownership has been passed to them. Hence, this case law is not suitable to defendants case.

34. In **Bharat Petroleum Corporation Ltd. Vs. Jethanand Thakurdas Karachiwala, All MR 1999 (1), 319** Hon'ble Bombay High Court held that '*prima facie case means that, the plaintiff can show to the court that, in all probabilities ultimately he will succeed in securing permanent injunction and therefore, refusal of relief pending the trial would make the final relief even if granted infructuous and in order to make effective, it is necessary to grant the relief even pending suit*.' In present case, on perusal of document and fact that there is no documentary proof by defendants to show their possession. Plaintiffs are succeeded to prima facie show there possession. Hence, case law is not applicable.

35. In **Surya Ramchandra Naik Vs. Sushila Tukaram Naik, All MR 2014 (6), 113** Hon'ble Bombay High Court held that, '*when there is a cloud in the title of the respondent, it is always necessary that, a declaration*

with regard to such a claim of title and possession has to be obtained.' In present case the suit is only for injunction. The issue may be decided relying on possession. Therefore, there is no question about title. And if it is so it may considered at the time of evidence.

36. Ld. Advocate for defendant argued that, suit properties are vatan land, therefore, prior permission of Collector before sale-deeds or any transfer is obligatory. In respect of sale-deeds on record such permission is not obtained, therefore sale-deeds is void. In support of his argument he relied on **Nagesh Bisto Desai Vs. Khando Tirmal Desai, AIR (SC) 1982, 887** in this case Hon'ble Supreme Court referred Laxmibai Sadashiv Date's case AIR 1977 Bom 350 and in that case Hon'ble Bombay High Court observed that, *'on regrant of the land, the holder is deemed to be an occupant and therefore the holding changes its intrinsic character and becomes Ryotwari and is like any other property which is capable of being transferred or partitioned by metes and bounds subject, of course, to the sanction of the Collector and on payment of the requisite amount.'* In present case suit is for injunction. There is no counter claim by defendants. At the stage of interim injunction application this case law is not applicable.

37. After considering all documents pleading and reasons as discussed above the court has come to the conclusion that plaintiffs have prima facie shown their possession over suit property. All contents and plea taken by defendants may to be considered at final stage of suit. Considering nature of application with reasons given above to have recorded findings of point nos. 1 to 3 positively and for point no. 4 I passed following order.

ORDER

- 1 Application Exh. 5 is allowed.
- 2 The defendants are hereby restrained temporarily till disposal

of the suit property obstructing the possession of plaintiffs in suit property by themselves or through other person or agent, servants etc.

(Pronounced in open Court.)

Date : 19.12.2019.

(Mrs. S. K. Deshmukh)
Jt. Civil Judge Jr.Divn.,
Sangola.