

Order below Exh.05 in R.C.S. No. 286/2012.

1. This is an application for temporary injunction under Order XXXIX Rule 1 & 2 of Code of Civil Procedure.

2. It is contended by the plaintiff that, Gut no.271 admeasuring 1H-81R assessment of Rs.1.25 ps., out of which 0H-80R land assessment of Rs.0.70 ps. bounded by East-Gut no.271, West- Gut no.270, South- Gut no.269 & North- Gut no.272 & 274 situated at village Sangewadi, Tq. Sangola is to be called as 'suit property'. The suit property is purchased by plaintiff. On the eastern side of plaintiff & defendant no.2 there is 0H-60R land of defendant no.1. Plaintiff & defendant no.2 are in joint ownership & possession of suit property, being joint Hindu family members. Defendant no.2 have purchased on 04/08/1999 from defendant no.1 Dnyaneshwar Waghmare 8 Aane share in borewell & submarcible electric motor through a registered sale deed for an amount of Rs.30,000/. Accordingly, such entry is effected in other right column over 7/12 extract, in favour of defendant no.2. Since then the plaintiff & defendant no.2 are taking water as per the sale deed. Plaintiff no.2 & defendant no.2 are residing at Mumbai for service & their parents plaintiff no.1 & his wife are cultivating the suit property. Under such circumstances, now defendant no.1 is causing obstruction to the right of the plaintiff to take water out of the common borewell. He is also demolishing the bandh situated in between the lands of plaintiff & defendants and by doing such act, he is making encroachment over plaintiffs' land. Defendant is raising quarrels about the boundary marks, hence plaintiff has filed this suit for fixation of boundaries, for perpetual injunction and for recovery of encroached suit property. Hence, the said application.

3. Defendant no.1 filed his say at exh.18 and alleged that, defendant no.1 is ownership & possession of his property, as it is since a long time. He has never caused any encroachment over the suit property.

Plaintiff is not the owner of the suit property, as he is mentioning in the plaint. By taking disadvantage of the fact that, plaintiff & defendants are the relatives of each other, this plaintiff have brought into existence false documents and now plaintiff is trying to grab the property of this defendant. Defendant have never sold any share in the borewell situated in their land Gut no.271. They have not received any kind of consideration from the plaintiff. By pretending that, he will dug a well in his property and assigned a share to defendant no.1 in the well, this plaintiff has brought into existence a false sale deed and now plaintiff is trying to grab a share in the borewell in the land of this defendant. Plaintiff have suppressed many material facts. This plaintiff & defendant no.2 have already filed RCS No.217/06 for declaration & injunction etc. But the suit was later on dismissed for non prosecution by plaintiff. Hence, now the plaintiff has no right to file another suit relating to the same subject matter. The suit property of this plaintiff originally belonged to one Waman & Ananda Waghmare, which is never partitioned between them. Defendant no.1 is the son of said Ananda and accordingly being a heir of Ananda, he received a share in the suit property by partition. Defendant no.2 & plaintiff no.1 have purchased the undivided land of deceased Waman. The suit property is yet not partitioned between plaintiff, defendant no.2 & defendant no.1. Hence, the application is not maintainable and liable to be rejected.

4. Defendant no.2 filed his written statement at exh.24 and admitted the suit of the plaintiff.

5. On considering pleadings & contentions of rival parties following points arise for my consideration to which I have recorded my findings for reasons stated below.

<u>Points</u>	<u>Findings</u>
1) Does plaintiffs prove prima facie case in their favour ?	'Yes'

- 2) Whether balance of convenience tilts in 'Yes'
favour of plaintiffs ?
- 3) Whether irreparable loss would be caused 'Yes'
to plaintiffs, if temporary injunction is not
granted ?
- 4) What order ? As per final order.

REASONS

6. In support of this application, plaintiff filed his own affidavit at exh.6. Plaintiff filed an affidavit of witness named Waman Waghmare, Subhash Howal & Vasant Waghmare. Plaintiff relied upon documents such as 7/12 extract of suit property & the original sale deed dt.04/08/99. To the contrary defendant no.1 relied upon the copy of exh.1 in RCS No.217/06 and written statement in RCS No.217/06.

As to points no.1 to 3 :-

7. In order to substantiate his claim, plaintiff have filed on record the original sale deed. On perusal of the said sale deed it appears that, defendant no.2 Subhash Mohan Howal have purchased from defendant no.1 named Dnyaneshwar Ananda Waghmare, 8 Aane share in new bore & submarcible motor situated in Gut no.271. Accordingly, defendant no.2 have filed his consent W.S. at exh.24 and admitted the suit of the plaintiff. It is contended by defendant no.2 that, plaintiff no.1 is his father and the suit property is now in possession of plaintiff no.1 & his mother, who are cultivating the suit property. Plaintiff have filed on record the 7/12 extract of the suit property, which shows in other rights column, an entry regarding the right of defendant no.2 i.e. the son of plaintiff's 8 Aane share in bore & submarcible motor situated in Gut no.271. It is the contention of this plaintiff that, defendant no.1 is causing obstruction to the right of plaintiff to take water out of the said borewell, which the said defendant is denying. By filing the written statement, defendant is also denying that plaintiff is the owner of that much area as mentioned in the plaint. He is

also denying the genuineness of the sale deed executed by him in favour of this plaintiff. Hence, it is clear that plaintiff has put up prima facie case in his favour and as the defendant is denying the genuineness of the sale deed, it also appears that he is causing obstruction to his right to take water, out of the common bore. If this be so, definitely plaintiff will suffer irreparable loss, as it will cause damage to the crops of the plaintiff. Hence, at this juncture balance of convenience lies in favour of this plaintiff. It is for the defendant to prove on the merit of this case by way of oral as well as documentary evidence, that the said sale deed in favour of defendant no.2 is false & bogus. At this juncture, the sale deed which the original copy itself, prima facie shows the title & possession of this plaintiff in common with the other defendants over the borewell and submarcible motor. Considering the above discussion, I answer points no.1 to 3 as 'Yes' and pass the following order.

ORDER

1. Application below exh.5 is hereby allowed.
2. Defendant no.1 or any person claiming through him is temporarily restrained from causing obstruction in any manner to the right of plaintiffs' to take water from the borewell, submarcible motor over the suit property, till the final decision of this case.
3. Cost in causa.

Date : 13/11/2014.

(Smt. F.B. Baig)
Civil Judge J.D. Sangola.