

ORDER BELOW EXH.5 IN REG.CIVIL SUIT NO.208/2015

The plaintiffs have filed suit for per perpetual injunction. By this application the plaintiffs are seeking temporary injunction restraining defendants from causing obstruction to their possession over suit property 1C till final disposal of the suit.

2. It is contended by the plaintiffs that, suit properties mentioned in para 1 of the plaint are owned and possessed by plaintiffs and their ancestors. On 03-04-1974 Dinkar Mahadu Ingavale and Laxman Sitaram Ingavale purchased suit property from Kondiba Tukaram Tavar and since then they are in possession of suit property. The entries as per sale deed is also taken in Grampanchayat record since the year 1974. There is cattle shed of plaintiffs' in suit property 1C and also it is used for wastage. On 12-06-2015 plaintiffs started putting blue metals (मृत्तम) on suit property 1C. The defendants have no concerned with the suit property but they obstructed possession of plaintiffs over suit property 1C and threatened them. They also obstructed plaintiffs from tying cattles in suit property 1C. The plaintiffs approached police but no action was taken. Hence this application.

3. The defendants resisted the application by filing say vide Exh.14. It is contended that, the plaintiffs are in possession of the property as per sale deed. That, the plaintiffs have given wrong description of suit properties. That, inadvertently the ancestors of defendants and defendants did not record their names to Grampanchayat record and so, with consent of co-sharers entries of Grampanchayat property Nos.237A/B and 238A/B were taken. The possession of plaintiffs over 9.45 X 9.45 Sq.mtrs. as per sale deed is not

obstructed by the defendants. The photographs filed by plaintiffs are in respect of defendant's property and without consent of defendants, photographs were taken. That, the plaintiffs were never in possession of suit property 1C. The plaintiffs have shown road towards east side of the suit property. That, if the property of plaintiffs is measured till the Grampanchayat road, then it comes three times more than the property described in sale deed. That, there is 25 X 5 ft. east west road proceeding from Grampanchayat road towards east side of suit property and ahead it, towards northern side there is south-north 65 X 5 ft. road. That, the boundary of plaintiffs' property starts from east road but plaintiffs are trying to show boundary of their property from Grampanchayat road. The plaintiffs have no concern with the property of defendants i.e. suit property 1C and no locus standi to file the application. Hence prayed for rejection of the application.

4. Heard both the sides. The following points arise for my determination and I have recorded my findings thereon for the reasons to be followed.

<u>Points</u>	<u>Findings</u>
1. Whether the prima case case lies in favour of plaintiffs ?	Yes.
2. Whether the balance of convenience lies in favour of plaintiffs ?	Yes.
3. Do the plaintiffs prove that they will suffer irreparable loss if injunction, as prayed is not granted?	Yes.
4. What order ?	Application is allowed.

REASONS**AS TO POINT NOS.1 TO 4:**

5. As these points are intermingled with each other, they are discussed together for the sake of convenience and to avoid repetition.

6. It is the case of plaintiffs that, suit properties gram panchayat property Nos.244 and 245 (old property No.33) are owned and possessed by plaintiffs and their ancestors. That name of plaintiffs and their ancestors is recorded to gram panchayat record since the year 1974 i.e. since purchase of property. It is submitted on behalf of plaintiffs that, the open space i.e. suit property 1C is shown since the year 1964-1965. That, towards northern side of suit property, defendants property is situated. In the year 2001-2002 defendants obtained false entry of cattle shed. That the defendants have no concern with the open space, owned and possessed by plaintiffs. That the plaintiffs are in possession since the year 1964. As the defendants are obstructing plaintiffs possession, it is necessary to protect the possession of plaintiffs. In support of his submissions, the learned advocate for plaintiffs relied upon following citations:

1) Lakshmi Alias Bhagyalakshmi and another Vs. E.Jayram (D) By LR.2013 SAR (Civi)360 (Supreme Court)

Suit for permanent injunction restraining defendants from interfering with plaintiffs' peaceful possession and enjoyment of suit property-Grant of ad-interim temporary injunction restraining defendants from interfering with peaceful possession and enjoyment of suit property by plaintiffs till disposal of suit-While granting temporary injunction the Court

very categorically observing in the order that respective rights of parties shall be decided at the time of final disposal of the suit-Order of High Court, in appeal against grant of ad-interim injunction, completely misconstruing the provisions of Order 39, Rule 2, Civil Procedure Code, deciding the scope of Section 53A of TP Act and order 2, Rule 2 Civil Procedure Code-Not sustainable.

2) Ram Daan (dead), through L.Rs.Vs. Urban Improvement Trust, [2015(2) Civil LJ 24]

Suit for permanent injunction, restraining defendant from dispossessing plaintiff from land and also from demolishing construction existing on land-Based on adverse possession-Claiming such possession since 1942-There was no assertion by defendant that he was owner of disputed land-Trial Court dismissed suit-In first appeal order of Trial Court was affirmed-High Court too-affirmed decision of first Appellate Court, holding that plaintiff failed to prove plea of adverse possession-But Supreme Court clarified legal position that as defendant failed to prove his ownership of plot and also that he failed to file suit under Section 6 for dispossessing plaintiff-Allowed appeal, setting aside, decisions of Court below, but subject to right of true owner of land to evict plaintiff in accordance with law.

3) Baban Anantrao Naik Vs. Sau.Pramila Uttamrao Yenare & another, 2011(6) ALL MR 15.

Application for temporary injunction-Factum of possession-At time of determination of an application for temporary injunction, the Factum of possession would only be the relevant factor-Whether the possession is lawful possession or not would not be the subject matter of enquiry.

7. On the other hand, the learned advocate for defendants has submitted that, as per sale deed, plaintiffs have not purchased suit property 1C and they are not in possession of said property 1C. That the plaintiffs are in possession of property as per sale deed i.e. 9.45 Sq.mtrs. including open space. But the plaintiffs tried to show wrong description. That the suit property 1C is owned by defendants. The plaintiffs have shown wrong boundaries and trying to grab the defendants property.

8. Perused the record. It can be seen that, the defendants have admitted that plaintiffs and their ancestors have purchased property in the year 1974. It is the contention of defendants that, the open space i.e. suit property 1C does not belong to plaintiffs and they have shown wrong description. If the copy of sale deed dated 03-04-1974 is perused, it can be seen that father of plaintiff and Laxman Sitaram Ingavale purchased the property bearing No.33 from Kondiba Tukaram Tavar. If the description of property as mentioned in sale deed is perused, there is a tin house having open space on front and back side admeasuring 9.45 Sq.mtrs. If the assessment extract for the year 1964-65 is perused, there is mention of open space on front and back side of the house. Similarly, the assessment extract for the year 1977-78 shows open space on back side and on front side. The extract also shows existence of road.

9. The learned advocate for defendant has submitted that, the mention of road in assessment extract of the year 1977-78 is not in respect of grampanchayat road but it shows road between plaintiffs and defendants' property. So also, the assessment extracts filed by plaintiffs till the year 2009-2010 shows open space on back side of the house and open space and road towards front side of the house. However, if the photographs filed by plaintiffs are perused, no such way, as mentioned

by defendants is seen in the photographs. The defendants have contended that the photographs filed by plaintiffs are of property belonging to them. But except bare contention there is no other proof to show that plaintiffs have taken photographs of defendants property.

10. As per the plaintiffs, they tie cattles in said open space and to show the same. It can be seen from photographs that, in front of the house, there is open space wherein cattles are tied and ahead it, there is a road. It is also submitted by learned advocate for plaintiffs that, they supply milk of cattles to Akashdip Dudh Sankalan, Riswad and to support this contention, payment receipts of Akashdip Dudh Sankalan are filed on record. Though it is contended by defendants that, said open space belongs to them, but in support of their contentions not a single document is filed on record. Even for a while it is assumed that the plaintiffs have failed to show their prima facie ownership over suit property 1C, but the documents filed by plaintiffs show that suit property 1C is in their possession.

11. The assessment extracts shows existence of cattle shed in the property of defendant. But it can be seen from documents on record that, Block Development Officer issued letter to Sarpanch, Riswad to verify on what basis record of cattle shed is shown in name of defendants. It can be seen that, accordingly grampanchayat, Riswad issued notice to defendants asking them to provide documents regarding the cattle shed. It also appears that plaintiffs objected recording of name of defendants to cattle shed belonging to them. The documents shows that defendants did not produce any documents regarding their ownership over cattle shed. If the open space and cattle shed belongs to defendants then there was no hurdle in providing documents to

Sarpanch, Riswad. Thus, it prima facie appears that, the defendants have failed to produce any document or other evidence to show their possession over suit property 1C. On the contra, the documents produced on record support contentions of plaintiffs and shows their possession over suit property 1C. Whether the possession of plaintiffs over suit property 1C is as per sale deed or not is a issue of fact and that will be decided after evidence is led by both the parties. But at this interim stage the documents on record shows prima facie possession of plaintiffs over suit property. Thus, the balance of convenience also lies in favour of plaintiffs. Considering these aspects , it is necessary to protect plaintiffs possession till final disposal of suit. Hence, I answer point Nos.1 to 3 in affirmative and in answer to point No.4, pass the following order:

ORDER

1. Application is allowed.
2. The defendant Nos.1 and 2 or anybody claiming through them are hereby restrained from causing obstruction to plaintiffs' possession over suit property 1C till final disposal of suit.
3. Cost in cause.

Karad.
Date: 17-07-2015.

(S.M. Padolikar)
4th Jt. Civil Judge,Jr.Dn.,
Karad.