

Common order below Exh. No. 26 and 36 in
R.C.S.No. 62/2015.

1) Perused the applications and say of the defendant No. 4 and 6. Heard counsel for both the parties. The present suit is for partition. The application below Exh. No. 26 has been filed with the contention that the plaintiff Ashok has cultivated the crop of onion in the land bearing Gat No. 16 and there is house built in Gat No. 15. The plaintiff has prayed in the said application for interim injunction against the defendant No. 4 and 6, so as to restrain the defendants from creating obstruction to the possession over the field and the residence in the said house. The application below Exh. No. 36 is with the prayer for seeking police protection to take out the crop of onion from the land Gat no. 16 as the defendant No. 4 and 6 are obstructing the plaintiff.

2) The defendants have not filed the written statement, but they have filed the written say to the present application, with the contention that the defendant No. 4 and 6 have cultivated the crop of onion in the said land. I have perused the documents on the record. It is pertinent to note that the copy of M.E.NO. 166 has been filed by the plaintiff on the record of the case, which shows that said mutation has been sanctioned on 29/12/2007, on the basis of partition deed and after service of

notice to the parties. The contents of the said mutation reflects that it is only 10 Are land which has been allotted to the share of the plaintiff Ashok and defendant Bhagwan has been allotted with the 22 Are land from the Gat No. 16.

3) There is no contention from the plaintiff about the illegality of M.E.No.166. Even, there is no pleading that the M.E.NO. 166 has been challenged by the plaintiff before the higher authority. On the face of record, it seems that M.E.No. 166 has been effected only on the basis of the written partition deed and after service of notice to the concerned parties.

4) It is not the case of the plaintiff that he has purchased whole area of land bearing Gat No. 16, but some limited portion of it has been alleged to have been purchased. Interestingly, the plaintiff has not mentioned the exact area and boundaries of the said exact area, of a land in Gat No. 16, in which he has cultivated the crop of onion. In the background of M.E.No.166, it seems a very vague contention from the side of the plaintiff that he has cultivated the crop of onion in the land bearing Gat No. 16. On the contrary, the unchallenged M.E.No. 166 depicts that the plaintiff has been allotted only with the 10 Are land in land bearing Gat No. 16 and the plaintiff has kept dead silence in his plaint. If the plaintiff himself has filed copy of M.E.No. 166 on the record, then it becomes obvious fact that the plaintiff is having knowledge of

M.E.No. 166, but the plaintiff has neither taken any action in that regard since 29/12/2007, nor averred any illegality even in the present application. I am of the opinion that the plaintiff has not come before the court with clean hands and seems to have concealed material facts in respect of the progress of M.E.No. 166 in regard to the partition between him and Bhagwan, though he is having knowledge of it. The sum and substance of the aforesaid discussion is that the plaintiff has failed to prove the prima facie case that he is possessing land bearing Gat No. 16 and he himself has cultivated the onion crop in it. Therefore, the applications in regard to the prayer of interim injunction in respect of the land bearing Gat No. 16 and for police protection is hereby rejected.

5) But, at the same time it is shown on the record especially through the admission by the defendant No. 4 and 6 given below Exh. No. 28 that the wife of plaintiff Ashok is residing in the house built in Gat No. 15. Therefore, the plaintiff is entitled for the interim injunction against the defendant No. 4 and 6 in respect of the possession of the said house.

6) In view of the aforesaid discussion, the application below Exh. No. 26 is allowed only in respect of injunction for house built in Gat No. 15 and the defendant No. 4 and 6 are hereby restrained during the pendency of the suit from

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creating any obstruction as to the possession of the plaintiff over the house built in Gat No. 15.

Place : Koregaon
Date : 04/04/2016

(S.N. Patil)
Civil Judge Jr. Dn. ,Koregaon.