

**COMMON ORRDER BELOW EXH.5 & 21 IN REG. CIVIL
SUIT NO. 194/2010 :-**

The application (Exh.5) is in respect of temporary injunction restraining the defendant from causing obstruction in the occupation and possession of the suit property i.e. Survey No. 133/9 and not to alienate or create third party right or interest therein and application (Exh.21) is in respect of temporary injunction directing the defendant not to demolish the house and water tank of the plaintiff over the suit property. Perused applications and say. Heard both the sides.

2) Defendant by filing his say (Exh.40) resisted both the applications. He contends that initially Revision Survey No. 133 was in six parts i.e. S.No.133/1 to 133/6 since year 1932. In the year 1981 due to Consolidation and Fragmentation (Prevention of Holding) Act Revision Survey No.133 was divided in ten parts i.e. 133/1 to 133/10. In that defendant got 1/4th share in Survey No.133/9 area admeasuring 0.53 R i.e. area admeasuring 0.13R and Anna Dadu Gole got 12 Ana share from the Revision Survey No. 133/9. In the mean time defendant filed R.C.S.No.203/78 and R.C.S.No.204/78 against Anna Dadu Gole which was compromised due to which Anna Dadu Gole handed over his 12 Ana share in Survey No.133/9 to defendant. In exchange of that defendant handed over his other properties to Anna Dadu Gole and agreement was entered into in that regard and thereafter by mutation entry No. 13470 whole area of Survey No. 133/9 i.e. suit property is entered in the name of defendant and since then he is in its use, occupation and possession.

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3) In support of his contention the plaintiff has filed 7x12 extract of S.No.26/9 at village Golewadi, Tal. Koregaon (Exh.7), mutation entry No. 13740 (Exh.8), certified copy of sale-deed dated 24/05/1989, affidavit of Sahebrao Ramchandra Gole (Exh.25) and Vilas Khashaba Gole (Exh.26).

4) In support of her contention the defendant has filed verified copy of mutation entry No. 12424, verified copy of mutation entry No. 12604, verified copy of mutation entry No. 12424, 7x12 extracts of Survey No.133/1 to 133/6 for the year 1932-33 to 1949-50, 7x12 extracts of Survey No. 133/1 to 133/10 for the year 1977-78 to 1993-94, xerox copy of register of compensation of acquisition.

5) Points for determination alongwith their respective findings for the reasons are discussed hereunder.

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether prima facie case is made out by plaintiff?	Yes for Exh.5, No for Exh.21.
2) Whether balance of convenience tilts in favour of the plaintiff?	Yes for Exh.5, No for Exh.21.
3) Whether irreparable loss will cause to plaintiff?	Yes for Exh.5, No for Exh.21.
4) What order?	Application (Exh.5) is allowed & Application (Exh.21) is rejected.

REASONS

Point Nos.1 to 3 :-

6) It is the case of the plaintiff that suit property was purchased by his grandmother by registered sale-deed

dated 24/05/1999 and thereafter due to oral family partition in between the brothers of the plaintiff suit property situated in Survey No. 133 came to the share of the plaintiff's predecessor since 1992 and since then he and his predecessor were in its use, occupation and possession. The mother of the defendant had only 4 Ana share in old Survey No. 133/6 and she has no legal heir except defendant. The defendant in collusion with the revenue authority made hollow entry in his name in respect of suit property and is attempting to dispose of to the third party. The defendant also threatened to demolish the house and water tank made by the plaintiff. Hence plaintiff filed the present application.

7) It is the case of the defendant that initially Revision Survey No. 133 was in six parts i.e. S.No.133/1 to 133/6 since year 1932. In the year 1981 due to Consolidation and Fragmentation (Prevention of Holding) Act Revision Survey No.133 was divided in ten parts i.e. 133/1 to 133/10. In that defendant got 1/4th share in Survey No.133/9 area admeasuring 0.53 R i.e. area admeasuring 0.13R and Anna Dadu Gole got 12 Ana share from the Revision Survey No.133/9.

8) In the mean time defendant filed R.C.S.No. 203/78 and R.C.S.No.204/78 against Anna Dadu Gole which was compromised due to which Anna Dadu Gole handed over his 12 Ana share in Survey No.133/9 to defendant. In exchange of that defendant handed over his other properties to Anna Dadu Gole and agreement was entered

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into in that regard and thereafter by mutation entry No. 13470 whole area of Survey No. 133/9 i.e. suit property is entered in the name of defendant and since then he is in its use, occupation and possession.

9) The plaintiff has filed the affidavit of Sahebrao Ramchandra Gole (Exh.25) and Vilas Khashaba Gole (Exh. 26) to prove that he is in continuous use, occupation and possession of the suit property. As against this defendant has filed mutation entry No. 13470 which evidences that suit property stands in his name. Defendant has also filed 7x12 extracts of Survey No.133/1 to 133/6 for the year 1932-33 to 1949-50, 7x12 extracts of Survey No.133/1 to 133/10 for the year 1977-78 to 1993-94 which evidence that suit property stands in the name of the defendant. Thus from the perusal of record of rights it appears that suit property is in possession of the defendant.

10) As against this plaintiff has only lead affidavitory evidence of two witnesses to prove his possession over the suit property. In such circumstance I have to believe the documentary evidence i.e. mutation entries and 7x12 extracts which prima facie evidence that defendant is in long standing possession of the suit property.

11) Plaintiff has failed to prove that he is in possession of the suit property. Mr.Barge contends that on perusal of sale-deed dated 24/05/1919 it does not reveal S.No.133/9 but only Revision Survey No. 133 is written in the said agreement. Though Revision Survey No.133 were in six parts since year 1932 and thereafter since year 1981

they were converted into ten parts. Apparently it is not mentioned therein however, such issue is to be dealt with during trial.

12) Mr.Sanas contends that as defendant is claiming his title over the suit property in view of compromise in both the above suits but no such compromise is done before the Court as the writing of the compromise is entered into outside the Court and as there is no registered documentary evidence to show that properties are transferred from one person to another, such writing has no value in the eyes of law. However, it is necessary to mention that such issue is to be dealt with during trial.

13) Mr.Sanas further contends that though plaintiff claims the title on the basis of Consolidation and Fragmentation (Prevention of Holding) Act but he has produced the letter issued by Tahsildar dated 23/02/2012 which shows that there was no scheme of consolidation and fragmentation under the Consolidation and Fragmentation (Prevention of Holding) Act. Per contra Mr.Barge contends that defendant did not get the suit property by way of consolidation and fragmentation scheme. It was due to the compromise entered into in between the parties. In short Mr.Sanas has questioned the mode of acquisition of the property by the defendant but it is needless to mention that such issue is to be dealt with during the trial.

14) Mr.Sanas further contends that plaintiff has constructed a house and water tank on the suit property and using it since long and defendant is trying to demolish

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the same as they have demolished part of it previously. As against this Mr.Barge contends that hut and water tank was made out by defendant on the suit property. Hence at this stage I have to see as to prima facie which party is in possession of the suit property. In the light of the above discussion it is held that plaintiff has failed to prove that prima facie they are in possession of the suit property.

15) Both the parties are claiming the title in suit property. Plaintiff has claimed title in suit property on the basis of registered sale-deed dated 24/05/1919. The plaintiff contends that defendant may create third party right or interest in the suit property. In such circumstance no harm or prejudice would cause to defendant if injunction is granted. On the contrary irreparable loss would cause to plaintiff if injunction is not granted.

16) In the light of the above discussion plaintiff has failed to make out prima facie case that he is in possession of the suit property in respect of Exh.5 or is residing in that house or using water tank on suit property. However, from the record it appears that he is deeply interested in contesting the suit by claiming the title and the possession on the basis of registered sale-deed in respect of suit property. Thus he has made out prima facie case for restraining the defendant from creating third party right in the suit property as it may result in multiplicity of proceedings and irreparable loss to him. Hence finding to above points is recorded in affirmative in respect of application (Exh.5) and negative in respect of application (Exh.21).

Point No.4 :-

17) In the light of above discussion application (Exh.5) deserves to be allowed and application (Exh.21) is liable to be rejected. Hence to record finding to this point following order is passed.

ORDER

- 1) Application (Exh.5) is allowed and application (Exh. 21) is rejected.
- 2) Defendant is hereby restrained from alienating or creating any third party right or interest in the suit property.
- 3) Cost in cause.

Koregaon
Date : 29/02/2012.

(S.T.Tripathi)
Civil Judge, Junior Division,
Koregaon