

Order below Exh. 5 in
Reg. Civil Suit No. 23 of 2017

1. The plaintiffs have filed present application for temporary injunction against defendant No.1 restraining him from causing obstruction to the peaceful possession over the landed property bearing Gat No. 97 (hereinafter referred to as 'suit property'.)
2. The case of the plaintiffs, in short, can be stated as follows :

The suit property is Deosthan Inam Class - III property belonging to Shri Deo Maruti. The name of predecessor of plaintiffs and defendant Nos. 2 to 7 i.e. Bhau Maruti Agalave (Jadhav) was recorded as protected tenant of the suit property vide Mutation entry No. 886. Bhau Maruti Agal died on 7-7-1983 and thereafter, the name of predecessor of plaintiffs and defendant Nos. 2 to 7 were recorded as legal heirs to the record of rights of the suit property. The plaintiffs and defendant Nos. 2 to 7 are co-sharers in the suit property and they are cultivating the suit land as a tenant since their predecessor. The plaintiffs used to pay rent to defendant No.1. The defendant No.1 filed application for possession of the suit property before the Tahasildar, Medha in the year 1989 and since then, refused to receive amount of rent. The plaintiffs and defendant Nos. 2 to 7 are performing religious festival of Hanuman temple at their own costs. In such circumstances, on 15-6-2017, the wife of plaintiff No.1 had been in the suit property for cultivation, the defendant No.1 appeared with some persons and obstructed her. He also threatened her not to cultivate in the suit property. The defendant No.1 also filed false case against plaintiffs in Medha Police Station. The defendant No.1 is Gurav of Shri Maruti Deosthan and neither the defendant no. 1 nor his predecessor were in possession of the suit property at any point of time. Hence, plaintiffs filed present application.
3. The defendant No.1 filed his say at Exh. 26 and contested the application. He contends that the temple of Lord Maruti situates over suit property since long ago and it is deity of whole village. He contends that he

used to perform daily 'Pooja Archa' and other religious ceremonies in the temple and the suit property was granted to the predecessor of defendant No.1 for maintenance by British Government as Inam. He contends that Maruti temple was registered as charitable trust in the year 1952 and predecessor of defendant No.1 Bandu Bayaji Gurav was declared as de facto manager of said trust and the term of his office is hereditary. He contends that the British Government issued Sanad in the year 1861 to the predecessor of defendant No.1 for performing Pooja Archa and other religious ceremonies in the temple and the suit property was granted to the predecessor of defendant No.1 for maintenance by British Government as Inam. He contends that no prior permission of Charity Commissioner has been obtained before filing of the suit and the suit is not maintainable. The defendant no. 1 contends that he is in actual possession of the suit property and the plaintiffs and defendant Nos. 2 to 7 have no concern and possession over the suit property. He contends that in current year, he cultivated the suit property and made it futile in presence of villagers and village officials. He contends that issue relating to interest of public at large is the subject matter of present suit and therefore, the plaintiffs are not entitled to seek injunction by taking advantage of illegal entry in the record of rights. He, therefore, prayed for rejection of the application.

4. In view of rival pleadings of both parties, the following points arise for determination of the application. The points, its findings along with reasons are as under.

<u>Points</u>	<u>Findings</u>
1. Whether plaintiffs have made out prima facie case for grant of temporary injunction as prayed ?	... Affirmative
2. Whether balance of convenience is in favour of plaintiffs ?	... Affirmative
3. Whether plaintiffs would suffer irreparable loss, if injunction is not granted as prayed ?	... Affirmative
4. What order ?	... As per final order.

- : REASONS :-

5. Heard the learned advocate for both parties. The learned advocate for plaintiffs argued that the name of plaintiffs and defendant Nos. 2 to 7 and their predecessors have been recorded as a protected tenant of the suit property. He argued that 7x12 extracts of the suit property produced on record shows possession of plaintiffs over the suit property and said possession is continuous and uninterrupted. He argued that the defendant No.1 in his statement before Tahasildar, Medha admitted the possession of plaintiffs over the suit property as a protected tenant. He argued that no documentary evidence is produced on record to show that the suit property was granted to defendant No.1 by British Government and the same is registered as a charitable trust. He, therefore, argued that the possession of plaintiffs cannot be disturbed by using force. He, thus prayed that the application may be allowed.

6. The learned advocate for plaintiffs placed his reliance on following case laws.

1. Kacharu Lakhu Aher vs. Masjid Mandwad Deosthan and others - 1990(3) Bombay C.R. 261. In the said case, the petitioner claims to be a tenant of respondents of the land which was assessed at Rs. 5-50 and he was cultivating the land as a tenant for more than 45 years. The Hon'ble Bombay High Court held that - “ Under section 8 sub section 3 of Bombay Tenancy & Agricultural Lands Act, there is no prohibition on the transfer of lands held on behalf of religious or charitable institutions which are partially or wholly exempted from payment of land revenue. The suit land is paying full land revenue. The prohibition against transfer under section 8 sub clause 3 cannot apply to the suit land. The petitioner is entitled to the benefit of provisions of Bombay Tenancy & Agricultural Lands Act 1948.”

2. Secretary, Devasthan Management Committee, Western Maharashtra, Kolhapur vs. Bhimanna Mallappa Mali and another - 1999(2) Bom. C.R. 92. The Hon'ble Supreme Court held that - “ It is clear that the

tenant was in possession of these lands since 1948 and for the first time, he came to be dispossessed in April 1979. The tenant was recorded in the revenue records as a protected tenant, in kabjedar column Maruti Deosthan has been recorded as a Kabjedar. Having regard to the long possession of the tenant, the Tahasildar could not have dispossessed him without determining the rights of tenant under the Tenancy Act.”

3. Baban Anantrao Naik vs. Smt. Pramila Uttamrao Yenare & another - 2011(6) All MR 15. The Hon'ble Bombay High Court held that - “ At the time of determination of an application for temporary injunction, the factum of possession would only be relevant factor. Whether the possession is lawful or not would not be the subject matter of enquiry.”

4. Smt. Pramila Lalbhai Dabhoya & another vs. Dr. Harish Lalbhai Dabhoya - 2005(4) All MR 288. The Hon'ble Bombay High Court held that - “ The plaintiff is in possession of suit premises. Even if the plaintiff has failed to prove any agreement, the possession can only be disturbed by the defendants by following due process of law and not by other means.”

7. The learned advocate for defendant argued that admittedly the suit property belongs to Shri Deo Maruti which is a registered trust. Though, it is the case of plaintiffs that their names were entered as a protected tenant vide mutation entry, the commencement date of tenancy, amount of rent and the agreement of tenancy is neither pleaded in the plaint nor any documentary evidence is produced on record regarding the same. He argued that in the year 1861, the British Government granted Sanad to the predecessor of defendant No.1 for performing Pooja Archa and other services in Maruti temple and the suit property was granted to him for maintenance. He argued that the right of defendant No.1 of performing Pooja Archa of Maruti temple is not denied by the plaintiffs. He argued that the predecessor of plaintiffs were village officials and by taking advantage of said fact, they got entered their names to the record of rights vide false mutation entry. He argued that the name of plaintiffs are not appeared in crop statement since the year 2003 to 2015. He argued that the father of

defendant No.1 was declared as de facto manager of the trust and as the term of office is hereditary, the defendant No.1 is in possession of the suit property as a defacto manager of charitable trust. He argued that the suit is barred, because no permission of Charity Commissioner has been obtained to file present suit. He, therefore, prayed for rejection of the application.

8. The learned advocate for defendant No.1 placed his reliance on following case law.

Bhaji Bayaji Pokale and others vs. Kantilal Baban Gunjawate and others - A.I.R. 1998 Bombay 114 - The Hon'ble Bombay High Court held that - “ It is clear that mere mutation entry or change in any mutation entry does not confer any title to any immovable property. It is very important to note here that it is an admitted position that the appellants were given no notice whatsoever with regard to the aforesaid change in the mutation entry.”

Point Nos. 1 to 3 :-

9. It is not disputed that the suit property is Deosthan Inam Class III land and belonging to Shri Deo Maruti. Perusal of copy of document produced at Exh. 37/5 and 6 prima facie shows that the suit property was granted to the predecessor of defendant No.1 by British Government by way of Sanad. The copies of documents produced at Exh. 37/1 shows that the Asstt. Charity Commissioner, Kolhapur Region Kolhapur in Application No. 4007 of 1952 registered Shri Deo Maruti temple as a public religious trust and Bandu Bayaji Gurav i.e. predecessor of defendant No.1 was declared as de facto manager regarding Seva & Pooja at the shrine and managing Deosthan lands. The copy of said decision shows that the mode succession to managership is hereditary. The said decision also shows that the suit property was declared as property of charitable trust.
10. In view of aforesaid documents, it appears that the suit property is a property of registered charitable trust and one Maruti temple situates over the suit property. It is not disputed that defendant No.1 is Gurav of said Maruti temple. Perusal of 7x12 extract of suit property Exh. 7 shows the name of Shri Maruti Deo as a holder, the name of defendant No.1 is as

cultivator and the name of plaintiffs as well as their predecessor as protected tenant of the suit property. In crop statement, neither the name of plaintiffs nor the name of defendants is appeared. The 7x12 extract of the suit property produced at Exh. 8 to 12 shows that the predecessor of defendant No.1 was cultivator of the suit property and the predecessor of plaintiffs i.e. Bhau Maruti Agalave was the protected tenant of the suit property. Said 7x12 extracts show that the suit property is in possession of the plaintiffs and their predecessors since the year 1983-84 to 2011-12. The Mutation entry No. 886 Exh. 13 shows that the name of predecessor of plaintiffs viz. Bhau Maruti Agalave was entered as protected tenant of suit property on 19-7-1948.

11. As far as question of maintainability of the suit is concern, this issue is required to be decided on merits. Whether the sanction of Charity Commissioner to file the suit is necessary and whether Charity Commissioner is a necessary party to the suit are the issues which are required to be decided on merits. The defendant No.1 is at liberty to file application for framing of preliminary issue to that regard. At present, as far as determination of present application is concern, the factum of possession would only be relevant factor. The above documentary evidence shows that the predecessor of plaintiffs was the protected tenant of the suit property and his name was entered vide Mutation entry No. 886 in the year 1948. The other right column as well as crop statement of 7x12 extract of suit property shows the name of predecessor of plaintiffs and the plaintiffs since long. The plaintiffs have prima facie shown their possession over the suit property.
12. The learned advocate for defendant No.1 argued that the suit property is a property belonging to registered charitable trust and it is a Deosthan Class III property and therefore, provisions of Bombay Tenancy & Agricultural Lands Act are not applicable to the suit property. Here, it is necessary to peruse 7x12 extract of the suit property. The 7x12 extract at Exh. 7 shows that the suit property is assessed at Rs. 9-06. The 7x12 extract of the suit property at Exh. 8 to 12 also shows that the suit property was

assessed at Rs. 9-06 as well as Rs. 1-62 since the year 1983-84 up to the year 2011-2012. It is not evident on record that the suit property was wholly or partially exempted from payment of land revenue at any point of time. Therefore, the facts in the case of Shri Kacharu Aher (cited supra) are equivalent to the facts of present case. The prohibition against transfer under section 8 sub clause 3 of Bombay Tenancy & Agricultural Lands Act is not applicable to the suit property.

13. The learned advocate for defendant No.1 also argued that no right, title or interest can be claimed on the basis of mere mutation entry and the names of plaintiffs and their predecessors were entered in the record of rights of the suit property on the basis of false mutation entry. The plaintiffs have produced on record copies of statement recorded by the Tahasildar, Medha at Exh. 3/9 to 11. The statement at Exh. 3/9 prima facie shows that defendant No.1 had given statement before Tahasildar Medha in which he stated that the suit property is Deosthan Inam Class III property and Ganpat Vitthal Jadhav etc. 5 i.e. plaintiff No.1 in present suit, cultivating the suit property since prior to the year 1956-57. He stated that the Bhau Maruti Agalave was protected tenant of the suit property and the name of his legal heirs are entered in other column and the said legal heirs are cultivating the suit property. He further stated that he used to perform Pooja Archa of Maruti temple. He further stated that he had filed application for possession of the suit property. The document at Exh. 3/10 is the copy of statement of plaintiff No.1 given before Tahasildar, Medha in which, he stated that the suit property is in his possession since long ago. The said documentary evidence shows that the plaintiffs are not claiming to be in possession over the suit property only on the basis of mutation entry. But, there is other documentary evidence on record to show their possession since long ago. Therefore, the ratio laid down in the case of Bhaguji Pophalle (cited supra) is not applicable to the facts of present case.

14. Considering the above documentary evidence, the plaintiffs prima facie proved that they have been cultivating the suit property since the year 1948 from their forefathers. It is not proved on record that the suit property

is wholly or partially exempted from payment of land revenue at any point of time. Therefore, the plaintiffs have proved prima facie case.

15. As the plaintiffs proved their possession over the suit property since long, the defendant No.1 has no right to disturb their possession by taking the law in his hands. The possession of plaintiffs can be disturbed by following due process of law and by no other means. If temporary injunction is not issued as prayed, they would suffer irreparable loss and they would lost their possession. Therefore, balance of convenience also lies in favour of plaintiffs. Therefore, I answer point Nos. 1 to 3 in affirmative.
16. In view of findings on the points, the application of plaintiffs is entitled to be allowed. Hence, the following order is passed.

- : ORDER :-

1. Application at Exh. 5 is allowed.
2. The defendant Nos. 1 is restrained by way of temporary injunction till decision of the suit from causing obstruction to the peaceful possession and cultivation of the plaintiffs over the suit property.
3. It is clarified that the temporary injunction is issued only in respect of possession and cultivation of plaintiffs over the suit property and it has no concern with the rights of management of Shri Maruti Deo temple situates over the suit property, its daily Pooja Archa and performance of religious festivals of said temple and charitable trust.
4. Costs in cause.

Medha
Dated 4-12-2017

(G.M. Sadhale),
Civil Judge, Jr. Divn., Medha.

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