

ORDER BELOW EXH.NO.05 IN
R.C.S.NO.266/2013

1/ Suit for perpetual and mandatory injunction is raised in respect of the properties mentioned in plaint para 1 (A & B) from and out of Mauje Vidni, Tal. Phaltan and inter-alia by the application temporary injunction under O.39 R.1 r/w 151 of the Code of Civil Procedure is prayed requiring the defendants not to cause any sort of interference and obstruction to the possession of the plaintiff from over the suit properties and further be refrained from cutting and or carrying the sugarcane from the field of the plaintiff.

The pith and substance of the plaintiff's case, is summarized, as under :

2/ The plaintiff has purchased the property bearing Survey No.285/2, (half portion from it's western side) from Sou. Kamal Bagade on 27/10/2006 for Rs.1,30,000/- by registered sale-deed. Likewise, on 07/10/2006 the plaintiff purchased the property Survey No.285/8 to the extent of 9 anna share of the western side from Suryakant Jagtap and other four persons for Rs.30,000/- by registered sale-deed. Pursuant thereto, M.E. Nos.13980 & 13968 were certified respectively. Since the date of sale-deed it is the plaintiff who is possessing the property and has sown the sugarcane crops. Initially, there was one well. That well is blocked howbeit, there is mention of Vihirpad in the record but, in fact, no well is in existence. It is alleged that in order to provide sugarcane to their cattles, defendant nos.7 & 8 started cutting the sugarcane crops. That was objected by the plaintiff and required them to refrain from carrying the sugarcane. The dispute was then apprised before the Tantamukti Samiti but that proved to be inept. Contrarily, the defendants threatened to construct the compound wall and therefore, they were required to demarcate the boundary marks of sub-divisions of Survey Nos.285/2 & 285/8 but

no heed was paid and as such cause arose to sue. The apprehended threat and or the apprehension as became eloquent the instance suit is raised alongwith this application with the prayer to grant temporary injunction against them.

3/ Defendant nos.7 & 8 have submitted their written statement at Exh.18. The sum and substance of their written statement is to the following effect. The description of the suit property is amiss. The title and so-called possession of the plaintiff is refuted. The alleged sale-deeds are feigned one. Per-contra, it is implored that originally the Survey No.285/8 adm.3R. was owned by deceased Bhiva Ganu Mahar. In partition, that property was allotted to the defendants and they were and are in possession of the property. Defendant no.7 is the widow of deceased Rajendra and defendant no.8 is his son. They have sown the sugarcane crops and have personally cultivated the field. The defendants as were carrying the sugarcane, the plaintiff by upsetting the apple cart insisted their concern over the sugarcane crops. It is expressed that the well was dug in Survey No.285/8 for convenience but on account of aridness the well was blocked. The plaintiff is neither in possession nor having title over the Survey No.285/8. By showing the cloven foot coupled with the illusory cause have raised the suit which deserves dismissal. On such grounds the application vis-a-vis suit is resisted.

4/ By way of counter-claim the defendants have re-iterated the same contents as those narrated in their written statement and therein, have prayed for perpetual injunction requiring the plaintiff not to cause any obstruction and interference to their possession.

5/ The plaintiff submitted his say and has denied the possession of the defendants. The say is the miniature of the averments in the plaint. After raising of the application (Exh.28) the

defendants have put-forth the counter-claim which itself is barred. Contending so, the application vis-a-vis counter-claim is resisted.

6/ I have heard Shri. H. R. Shinde for the plaintiff and Shri. V. M. Mahajan for defendant nos.7 & 8.

7/ In view of the submissions and the nature of application the points for my determination with the findings thereon are as under :

SR.NO.	POINTS	FINDINGS
1.	Whether the plaintiff has made out prima-facie case in his favour ?.....	Yes.
2.	Whether balance of convenience lies in his favour ?.....	Yes.
3.	Whether he would suffer irreparable loss if temporary injunction is not granted in his favour ?	Yes.
4.	What order ?.....	As per final order.

: REASONS :

8/ **AS TO POINT NOS. 1 TO 3** :- Three golden principles the plaintiff is required to enunciate at this nascent tier. At the out-set I would like to point out that the plaintiff and the defendants have no nexus with each other. By hitting nail on the head Shri. Shinde emphatically entreated that the sale-deed alongwith the abutments coupled with the statement of defendant no.8 therefrom the possession and the violation to his right when stands explicit then that ipso-facto is sufficient to hold in favour of the plaintiff. Per-contra, Shri. Mahajan adjured that Survey No.285/8 was allotted to them in

partition and they have sown the sugarcane crops and therefore, the name of the grandfather of defendant no.8 when is evinced in the 7/12 extract which shows their concern then that belies the case of the plaintiff.

9/ It is the case of the plaintiff that he has sown the sugarcane crops in the suit property. The plaintiff has placed on record the 7/12 extract of Survey No.285/2 from the year 2010-2011 to 2012-2013. In the 12th column the crops viz. millet and wheat are appearing but it nowhere reveals the name of sugarcane crops. For the Survey No.285/8 from the year 2010-2011 to 2012-2013, in the 12th column, it is written as Pot-Kharaba. Necessarily, the documents when runs counter with the case put-forth then in the submission of Shri. Mahajan that negate the case of the plaintiff regarding the sowing of sugarcane. But, one cannot endorse that submission. The record reveals that the plaintiff had vexed his grievance before the police on 30/07/2014.

10/ Apart from that, the plaintiff has reclined on the statement of Shankar Rajendra Jagtap (Defendant no.8). That statement was harped and it was amplified by Shri. Shinde that the concern when has admitted the possession and the standing sugarcane crops of the plaintiff then that substantiates the case of the plaintiff. Necessarily, the admissions and or the admitted facts which are eloquent regarding occupation / enjoyment and the obstruction then one has to concur the submission of Shri. Shinde that the possession of the plaintiff has to be protected.

11/ In addition to that, the plaintiff has produced on record the original copy of two sale-deeds. From those documents the boundaries when are illumined then therefrom the exclusive possession of the specified portion of the plaintiff is explicit. The

abuttals therein are decisive and that lends aegis to the case put-forth by the plaintiff. Except apart, the photographs which have been filed on record therefrom the standing sugarcane crops when surfaces on record then the boundaries coupled with the documents the exclusive possession of the plaintiff remains irrefragable. Such facts when emerges on record then neither the affidavits of Vitthal Jagtap, Bapu Mahar and Murlidhar Jagtap can be capitalized nor the name of Bhiva Ganu Mahar in the 7/12 extract can be given prominence.

12/ So far the case of the defendants regarding the allotment of the Survey No.285/8 is concern, even prima-facie, the evidentiary plank is bleak. Therefore, the documents which are evident of the exclusive possession of the plaintiff over the specified portion then that possession cannot be disturbed and has to be protected. Necessarily, therefore, in such scenario, the plaintiff is entitled for the preventive relief. Therefore, I hold that the plaintiff has proved the prima-facie case. Balance of convenience tilts in favour of the plaintiff than in favour of the defendants. In view of the discussion laid ante, I ordain as follows :

ORDER

1. Application Exh.5 is allowed.
2. Defendant nos.7 & 8 and or anybody claiming through them are temporarily refrained from causing obstruction and interference to the peaceful possession of the plaintiff from over the suit properties as mentioned in plaint para 1 (A & B) and are further restrained from cutting sugarcane crops and other crops standing in the suit property of the

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plaintiff till disposal of the suit.

3. Costs in cause.

Phaltan.
Date : 02/04/2015

(P. H. Karve)
Civil Judge (J.D.)
Phaltan, Dist. Satara.