

ORDER BELOW EXHIBIT No. 05.

[Passed on 28/09/2020]

(CNR No.MHWS07-000555-2020)

1]. The instant application has been moved by the applicant/plaintiff under the provisions of Order XXXIX Rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908. Perused the application.

Facts germane to the decision of the application are as under : -

2]. It is contended by the applicant that, one Bhimrao Kondiba Jadhav was owner of the field property situated at Mauje Bhilkheda, Tq. Karanja, Dist-Washim bearing Survey No.12 ad-measuring 2 H. 47 R. land (Hereinafter, the said property is referred as 'the suit field' for the sake of brevity.)

3]. It is further submitted by the applicant that Bhimrao Kondiba Jadhav died on 17/12/1999 and he alongwith his sisters namely Kantabai Vinayk Rao Kadam, Sau. Ratnmala Sudhakar Dhamal and Sau. Indubai Babanrao Shinde succeeded the suit field being legal heirs of deceased Bhimrao Jadhav. Thereafter, all his sisters i.e. non-applicant No. 1 to 3 have relinquished their share orally in his favour on 13th day of death of their father before so many persons. Subsequently, the applicant has applied with Talathi for taking necessary mutation in place of his deceased father and the mutation No. 1867 came to be taken by Talathi in the revenue record on 01/06/2009 which also came to be confirmed by the R.I. on 20/06/2009 and the applicant came to be shown as owner of the suit field accordingly. The applicant is possessing the suit field since then being owner thereof.

4]. Further, as the non-applicants have relinquished their share in favour of the applicant orally. The applicant made request to them that they

should effect relinquishment of their shares by written document in his favour. Therefore, non-applicant No. 1 and 2 executed registered relinquishment deed dated 10/02/2011 bearing serial No. 780 and relinquished their share in the suit field in favour of the applicant. However, non-applicant No. 3 intentionally avoided coming for the execution of the document.

5]. Moreover, non-applicant No. 3 on the instigation of others has preferred one appeal on mutation No. 1867 before S.D.O., Karanja bearing case No. RTS-64/Bhilkheda/34/2017-18. Thereafter, order came to be passed on 25/01/2019 by the S.D.O. and by that order appeal of non-applicant No. 3 came to be allowed and mutation No. 1867 was cancelled. The court has directed to R.I./Talathi to take mutation of Survey No. 12 as per the settled rules. Non-applicant No. 1 and 2 were made parties as respondent No. 2 and 3 to that appeal. Therefore, being aggrieved by said order the applicant has preferred appeal bearing No. RTC-64/Bhilkheda/12/2018-19 before Additional Collector, Washim. The said appeal was partly allowed and the matter was remanded to S.D.O., Karanja. Thus, Order came to be set aside for mutation No. 1867. However, during pendency of said appeal non-applicant No. 2 died and her legal heirs are impleaded as the non-applicants in this suit.

6]. Subsequently, after passing of the Order by Additional Collector, Washim the applicant took the said Order to Talathi and asked him to take the mutation of Order but concerned Talathi informed the applicant that he has already cancelled mutation No. 1867 and inserted the names of all his sisters in the column No. 7 alongwith the applicant and the said mutation is recorded at serial No. 4660. He further informed that after the death of non-applicant No. 2 her legal heirs are also taken on record in column No. 7 and mutation is recorded at serial No. 4846.

7]. Therefore, the applicant has preferred revenue appeal before SDO, Karanja as both mutations are illegal and not according to law. The said appeal bearing No. RTS-64/Bhilkheda/12/2019-20 is pending for disposal. Thus, non-applicant No.1 and 2A to 2E have no legal rights in the suit field as they have already relinquished their share in the suit field in favour of the applicant but by taking the disadvantage of names in 7/12 extract all the non-applicants are trying to sell the suit field. In that respect they are meeting with various landlords in Karanja who in turn are going to inquire with the applicant about the suit field. However, the non-applicants are having no right or interest in the suit field as they have relinquished their share in favour the applicant. Particularly, non-applicant 1 and 2 have relinquished their share by registered document and thus the applicant is the sole owner of the suit field. Considering illegal activities of the non-applicants, the applicant published public notice in daily newspaper 'Lokmat' dated 15/01/2020 and brought to the notice of public at large the factual position of the suit field.

8]. However, after publication of public notice the non-applicants have continued their illegal activities and trying to meet the purchasers for the sale of the suit field and the applicant has received phone calls from them. They inquired about the position of the suit field. On 10/02/2020 at about 05 p.m. one purchaser who has not stated his name has threatened the applicant that he is going to purchase 3/4th share of the suit field. He will take the tractor in the suit field and will take the forcible possession of the suit field from the applicant. It is also submitted by the applicant that there is no partition of the suit field took place by mets and bounds and applicant is only in possession of entire suit field as the non-applicants have orally and non-applicant No. 1 and 2 by registered relinquishment deed relinquished their shares from the suit field. Moreover, the non-applicants have no legal right or interest in the suit

field and if it is held that there is any right of non-applicant No. 3 then it will be only to the extent of 1/4th share. Therefore, the non-applicants have no right to sale the suit field unless there is any partition by mets and bounds if they found legally entitled for the same. Hence, the applicant prayed for allowing this application.

9]. The defendants/non-applicants No. 1 to 2-A to 2-E filed their written statement, say on Exh.5 alongwith counter claim vide Exh.13. Non-applicant No. 3 filed pursis Exh. 25 contending that reply and written statement filed by non-applicant No. 1 and 2 may kindly be treated as their reply and written statement. The non-applicants through their reply admitted about the suit field and it is yet not partition, previous ownership of Bhimrao Jadhav and contents of his death. They also admitted that the applicant and the non-applicants are legal heirs of deceased Bhimrao Jadhav. They further admitted that defendant Kantabai died and her legal heirs are taken on record. However, they submitted that they have not relinquished their share from the suit field by executing registered relinquishment deed. They also submitted that after death of Bhimrao Jadhav, the applicant has mutated his name only without informing to his sisters i.e. the non-applicants. Therefore, non-applicant No. 3 Indubai has preferred an appeal before SDO, Karanja and got cancelled name of the applicant from the said revenue record. Therefore, as per rules it is directed to mutate names of all legal heirs and accordingly mutation No. 4660 is recorded and 7/12 extract is also having names of all legal heirs. Thereafter, non-applicant No. 2 Kantabai died and mutation entry No. 4846 is recorded. Further, there is no partition took place by mets and bounds in respect of the suit field.

10]. It is also submitted by the non-applicants that the applicant

appeared before SDO, Karanja in the case of RTS 64/Bhilkheda/34/2017-18 and filed his written say and also argued the said matter. However, the applicant has not pleaded there that non-applicant No. 1 and 2 have relinquished their shares by executing registered relinquishment deed. Similarly, the applicant has not pleaded the alleged fact before Additional Collector, Washim because the non-applicant No. 1 and 2 have not executed any relinquishment deed in favour of the applicant. The applicant is real brother of the non-applicants and they are having very cordial relations. Therefore, the non-applicants were going to the house of the applicant and he was taking every care of the non-applicants. In the year 2009 mutation of suit field was in the name of Bhimrao Kondiba Jadhav. Thereafter, the applicant told to the non-applicants that names of all legal heirs have to be recorded in the revenue record. Therefore, he took the non-applicant No. 1 and 2 before Tahsil office and obtained their thumb impressions. At that time, he told that now names of all legal heirs would be inserted in the 7/12 extract and shown 7/12 extract having his name. Actually, in the year 2011 the names of the non-applicants were not recorded in 7/12 extract.

11]. In such circumstances when there was no right available to the non-applicants then question of relinquishing does not arise. The applicant has obtained thumb impressions of the non-applicants by playing fraud on them. Moreover, the applicant has not shown and told about the alleged relinquishment deed to the non-applicants. The non-applicants came to know about the said relinquishment deed after receiving notice of the instant suit on 06/03/2019. At that time, the non-applicants get surprised. Further, the non-applicants have not got any consideration as alleged in the relinquishment deed.

12]. The applicant has submitted false and bogus documents alongwith the suit. The applicant has mis-used thumb impressions of the non-applicants which were given for recording their names in 7/12 extract. There was no free consent of the non-applicants to the alleged relinquishment deed. Further, the non-applicants are illiterate. Therefore, the said deed is not binding on the non-applicants. Hence, the non-applicants prayed for rejection of the present application.

13]. Perused the documents on record. Heard the learned advocate Shri. R. S. Joharapurkar for the applicant and Shri. K. W. Ingole for the non-applicants at sufficient length. On the basis of material on record and argument from both sides following points arise for determination and I have recorded my findings thereon with reasons.

Sr. No.	Points	Findings
1].	Whether the applicant is having <i>prima facie</i> case in his favour?	Yes.
2].	Whether the balance of convenience lies in favour of the applicant?	Yes.
3].	Whether the applicant will suffer irreparable loss, if injunction is refused?	Yes.
4].	What order?	Application is allowed.

REASONS

14]. At the outset, it would not be out of milieu to refer here that one cannot go into the details of the merit of the suit. What is to be considered is the *prima facie* case and whether the same is proved by the plaintiff by affidavit or otherwise. Burden to prove *prima facie* case is on the plaintiff and further irreparable loss will accrue to her if temporary injunction is not granted. The discretion of the Court is exercised to grant a temporary

injunction only when the following requirements are made out by the plaintiff viz.

[i] existence of a prima facie case as pleaded, necessitating protection of plaintiff's right,

[ii] when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's right or likely infringement of defendant's rights, the balance of convenience tilting in favour of the plaintiff and

[iii] clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted.

So, considering these settled canons, it is required to be seen whether the applicants are entitled for the relief or not?

Point No. 1 to 3 :-

15]. I am taking all these points together for discussion in order to avoid repetition. It is important to note that Order XXXIX Civil Procedure Code deals with various interlocutory orders granting Temporary Injunctions. Rule 1 is primarily concerned with preservation of the property in dispute till ascertaining the relevant legal rights. It is the apprehension of the applicant that the non-applicants may create any third party interest and dispossess him from the suit field as they are having meeting with purchasers. Even, the applicant is receiving phone calls from the purchasers.

16]. Considering the nature of suit and relief claimed in this application, the possession of either party over the suit field is the crux of the matter. At this stage, on prima-facie basis, the applicant has to prove that, he is in possession of the suit field and his possession is liable to be protected from

alleged acts of the non-applicants. To canvass his case, he strongly relied upon copy of relinquishment deed dated 10/02/2011, copy of order of S.D.O., Karanja dated 25/01/2019, copy of Order of Additional Collector, dated 24/10/2019, copy of mutation entries No.1867, 4660 and 4846, copy of 7/12 extract of the suit field dated 11/02/2020 and copy of public notice published in daily newspaper 'Lokmat' dated 15/01/2020. I have carefully gone through the copies of these documents filed on record vide list at Exh.04. The non-applicants have not filed any document on record.

17]. It is argued by the learned advocate for the applicant that the relationship, description and nature of the suit field is admitted. It is also admitted that partition in respect of the same is yet not effected. The non-applicants have orally relinquished their share in favour of the applicant from the suit field. Hence, the applicant asked for execution of document in respect of the same. At that time, non-applicant No. 3 has not turned but non-applicant No. 1 and 2 have executed registered relinquishment deed in favour of the applicant. Father of the applicant and non-applicants died in the year 1990 and relinquishment deed is executed after 21 years i.e. in the year 2011.

18]. It is also argued by the learned advocate for the applicant that non-applicant Indubai has preferred an appeal before S.D.O., Karanja in respect of mutation entry No. 1867 alongwith application for condonation of delay. However, S.D.O., Karanja has passed order in the said appeal directly without deciding application for condonation of delay. Therefore, the applicant has filed appeal before Additional Collector, Washim. However, during pendency of the said appeal the non-applicant Indubai got mutate mutation entry No. 4660 and 4846. Hence, the said mutation entries are illegal. Furthermore, non-applicant No. 1 and 2 have relinquished their shares from the suit field but now

all the non-applicants are trying to sale the suit field. Thus, the applicant has published public notice contending all relevant information. The applicant is in possession of suit field from the year 1999. Furthermore, as per section 91 of the Indian Evidence Act when the document is admitted by both the parties then no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself. Hence, it is necessary to restrained the non-applicants from creating any third party interest.

19]. In support of his argument he relied on judgment of **Calcutta High Court** in **Ashim Ranjan Das Vrs. Sm. Bimla Ghosh and others [(1992) AIR (Calcutta) 44]** *wherein the Hon'ble High Court has held that where a stranger purchased the property and tried to enter into joint possession with the members of undivided family then it is likely to interfere in privacy of such members. In such circumstances injunction can be granted by the court.* I have gone through the said authority. However, with most due respect I would like to submit here that the said authority is on the point of house property whereas the property in the case in hand is agricultural property. Hence, the applicant will not get any benefit from the said authority.

20]. On the contrary, the learned advocate for the non-applicants Shri. Ingole argued that mutation in the name of the applicant is dated 19/05/2009. On the basis of it, the applicant has started the dispute. Moreover, in the revenue proceedings before S.D.O. and Additional Collector the applicant has not pleaded about relinquishment of rights by his sisters. He also argued that the applicant has support of Section 52 of the Transfer of Property Act. Moreover, it is settled law that injunction cannot be granted infavour of co-owner. Hence, he prayed for rejection of the present application.

21]. At this stage the court can refer the documents filed on record on its face value without its formal proof. It is important to note here that the applicant come with case that he is in possession of the suit field. Perusal of document i.e. 7/12 extract shows that the suit field is standing on the name of the applicant and the non-applicants. However, admittedly both parties are fighting over the mutation recorded in revenue record over the suit field. But perusal of the reply/counter claim shows that the non-applicants have claimed inquiry into mesne profit under Order 20 Rule 12 of the Civil Procedure Code. It means the non-applicants have admitted possession of the applicant over the suit field. Hence, admitted facts need no proof as per Section 58 of the Indian Evidence Act. Further, perusal of relinquishment deed shows that in the year 2011 the applicant was enjoying the suit field alone. Moreover, it is not case of the non-applicants that the applicant was subsequently dispossessed from the suit field. Therefore, in my considered view the applicant is in possession of the suit field.

22]. The learned advocate for the non-applicants also argued that it is settled law that injunction cannot be granted infavour of co-owner. Admittedly, the suit field is ancestral property so the applicant and non-applicants are the co-owners and co-sharers. As per the settled principle of law, if there is common property or the joint tenant or tenant in common, all of them are entitled to the said property and are entitled to enjoy the same. If one of them alone hold or occupies the entire property or part of it, his possession cannot be said unlawful. His physical possession is that of an owner of his own interest and also that of an agent as to the co-owners. Therefore, the possession of one of the co-sharer is the possession of all of them. The co-sharer who is in possession of the property is also entitled to the enjoyment of the same. The possession of one of them is possession of all in the eyes of law unless the

person who has been in exclusive possession assert his title in himself to the exclusion of the other co-sharer which amount ouster. The next question is what is ouster in the eyes of law when the co-owners raising plea of adverse possession it deemed to be ouster.

23]. In the present suit the applicant has admittedly come before the court with pleading that the suit field is the ancestral property of the applicant and non-applicants. He does not come with pleading that the non-applicant has no share in the suit field. Therefore, in my considered view there is no ouster on the part of the applicant. His possession need to be protected till the disposal of the suit. Moreover, perusal of record shows that the alleged relinquishment deed is registered on 10/02/2011 and it is challenged after more than 9 years. It means that the non-applicant No.3 might have discovered the alleged fact with ordinary diligence. The question arose as to why she has keep mum when the mutation was standing in the name of the applicant alone for more than 10 years. In this respect Section 3 of the Transfer of Property Act provides that a person is said to have notice of a fact when he actually knows that fact, or when, but for willful abstention from any enquiry or search which he ought to have made, or gross negligence, he would have known it.

24]. The learned advocate for the non-applicants also argued that there is support of Section 52 of the Transfer of Property Act to the applicant. So, there is no need of granting T.I. infavour of the applicant. However, in this respect I am guided by **the Hon'ble Bombay High Court, Bench at Nagpur i.e. Harish Bulchand Tejwani Vs. Nandlal Hakikatrai Motwani 2016(1) ALL MR 127** wherein the Hon'ble Parent High Court discussed about Section 52 of the Transfer of Property Act. Some portion of Para No. 7 of the said authority is as under :-

"Merely because section 52 of the Transfer of Property Act, is existing and operative, it does not mean that the plaintiff is not entitled to pray for and get interim injunction, when there is clear prima facie case in favour of the respondent / plaintiff to protect the suit property pending disposal of the suit. The discretionary relief of interim injunction is granted on the basis of prima facie case, balance of convenience, and consideration of irreparable loss with a view to protect the suit property as it is and not to allow creation of irreversible situation whereby legal and valid claim of the plaintiff is likely to be defeated by transfer / alienation of the suit property by the defendant in the case. Dishonesty of litigant intending to defeat the probable decree, can be prevented by appropriate interim order, when necessary the facts and circumstances of the case."

25]. Hence, considering peculiar facts and circumstances of the present case, I am of the view that the above authority is squarely applicable to the case in hand, because in the present case though there is protection provided to the applicant through Section 52 of the Transfer of Property Act, however, to avoid multiplicity of litigation injunction needs to be granted in favour of the applicant.

26]. Therefore, considering these things I am of the prima facie view that the applicant is possessor of the suit filed as alleged. Further, documents on record prima facie shows that the non-applicants are trying to sale out the suit field. The non-applicants are not having any right or interest to do so after relinquishing their rights infavour of the applicant. Moreover, non-applicant No.3 is not having right to dispose of the whole suit field as there is no partition took place by mets and bounds.

27]. At this stage of the matter, on the face of documents placed on

record, it appears that applicant is having a prima facie case in his favour and the balance of convenience also lies in his favour. Therefore, if this application is rejected certainly the applicant will suffer from an irreparable loss. Hence, considering these aspects I answer Point No. 1 to 3 in the affirmative.

Point No. 4 :-

28]. From findings of Points No. 1 to 3, it appears that the application deserves to be allowed. So, accordingly I record my finding to point No. 4 and proceed to pass the following order.

ORDER

1. Application at Exh.05 is hereby allowed.
2. The non-applicants or their agents or servants and anybody on their behalf are hereby restrained to create third party interest over the suit field by way of sale, exchange, gift or by any mode till final disposal of the suit.
3. Costs in main cause.

(Pronounced and dictated in open Court.)

Date:- 28/09/2020.
Place:- Karanja Lad

Civil Judge J.D., Karanja.
District-Washim.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/
Order are same word to word as per the original order.

Name of Steno. :- N.L. Jamnik (Steno-L.G.)

Court Name :- Civil Judge (Jr.Dn.) and J.M.F.C.,
Karanja. Dist. Washim.

Date :- 28/09/2020

Order signed by the :- 28/09/2020
presiding officer on

Order uploaded on :- 28/09/2020