

**ORDER BELOW EXH. 5**  
**(Passed on 03/02/2016)**

The plaintiff has filed the present application seeking temporary injunction, under order 39 rule 1 & 2 of C.P.C., for restraining the defendants from obstructing peaceful possession of the plaintiff over the suit property.

Briefly the facts of Exh.5 are as follows :-

2] That the property situated in Medshi, Tq.Malegaon, Dist. Washim in Gat No.463 to the extent of 1 H 07 R as well described in para no.1 of plaint, is the subject matter of the present suit [Hereinafter referred as suit property].

3] The plaintiff submitted that he is the owner and possessor of the suit property. He said to have purchased the same from defendant no.1 Subhani Gaurve on 31/12/2002 vide registered sale-deed. Accordingly, the plaintiff's name came to have been mutated as owner and possessor of the suit property. The plaintiff further submitted that the defendant no.1 had filed a civil suit bearing No.39/2007 against the plaintiff claiming declaration that the sale-deed executed dated 31/12/2002 be declared as nominal and as result of money lending transaction. However, the defendant's suit was dismissed and also the appeal filed by defendant was turned down on 19/01/2012. Thereafter the defendant has not preferred any appeal against the order of Hon'ble A.D.J.,Washim. Thus, the plaintiff has been judicially declared as owner and possessor of the suit property.

4] On 31/05/2015 the plaintiff had sent his labours for plucking the mangoes from the mango trees standing in the suit property. However, the defendant obstructed the labours. Hence, the plaintiff has filed the complaint with Medshi police station. Despite this the defendant kept obstructing the plaintiff. On 03/06/2015 also the defendants obstructed plaintiff's labours when they had been to the suit property for ploughing. Hence, the plaintiff had to have filed the present suit and claimed consequential relief vide Exh.05.

5] The defendants filed their say below Exh.23. At the outset they have denied all the contentions and allegation raised by the plaintiff. The defendants submitted that the plaintiff is a money lender. The defendant no.1 was in need of money, hence, he had obtained hand-loan of Rs.50,000/- on interest from the plaintiff. The suit property was kept as security for the said hand-loan. However, the plaintiff got mutated his names to the suit property over the nominal sale-deed executed. In the year 2007 the defendant had been to plaintiff asking to return his property by accepting the amount. However, the plaintiff did not pay any heed. Hence, the defendant had to have filed the civil suit bearing No.39/2007 wherein the plaintiff had described the suit property altogether different than of this suit. The defendants further submitted that on 31/05/2015 the defendant and plaintiff had filed counter-complaints with the police station. The concerned police on inspection of the suit property and on verification as to possession of defendant over the suit property, the defendant was allowed to have yields of mango trees. In fact there are no mango trees on plaintiff's property as claimed, as the sale-deed requires the mentioning of the fruit yielding trees. Hence, finally the defendant prayed to reject the application.

6] Having regard to the nature of application and pleadings of the parties following points arose for my determination and I have recorded my finding against each point for the reasons stated below.

	<u>Points</u>	<u>Findings</u>
1]	Whether prima facie case is in favour of Plaintiff ?	... Yes.
2]	Whether balance of convenience lies in favour of plaintiff ?	... Yes.
3]	Whether irreparable loss will be caused to the plaintiff if injunction is not granted ?	... Yes.
4]	What order ?	As per order below.

### REASONS

As to point Nos. 1 to 3 :-

7] In support of his contentions the plaintiff has relied upon sale deeds, 7/12 extract, mutation entries and copy of judgment in RCS No.39/2007, copy of RCA No.33/2010 & copy of police complaint. On the other hand, the defendants have relied upon copy of Nazul Sheet map. I heard both the Ld. Advocates.

8] I perused the documents on record. The plaintiff has claimed the ownership and possession of the suit property on the basis of the sale-deed dated 31/12/2002. On the contrary, the defendant contended that the said sale-deed was bogus and as security against the hand-loan obtained from plaintiff. Admittedly, the plaintiff and defendant had contested RCS No.39/2007 wherein the present defendant no.1 had filed the suit claiming declaration as to the sale-deed dated 31/12/2002 as null and void and out of the

transaction of illegal money lending. However, the defendant's contention was turned down by the then C.J.[J.D.], Malegaon. The defendant had preferred an appeal with the Hon'ble A.D.J., Washim. However, the same was also turned down. Both the Hon'ble Courts had upheld plaintiff's possession over the suit property and had declared the sale-deed as valid transaction. The defendant no.1 has not preferred any appeal against the order of Hon'ble A.D.J., Washim. Thus, the order has obtained finality. Hence, in view of sale-deed dated 31/12/2002 and judicial pronouncements to that effect, the plaintiff proved his ownership and possession over the suit property. Moreover, the defendant is legally estopped from agitating again the same facts which has attained judicial finality.

09] The defendants have contended that there exists no such mango trees on the suit property as claimed, because had there been such mango trees, the sale-deed dated 31/12/2002 had mention of this as it is legally necessary to mention the fruit yielding trees in the sale-deed. However, the defendant's this contention appears to be self-contradictory one. The defendants themselves have re-affirmed the incident dated 31/05/2015 as affirmed by plaintiff. The plaintiff had alleged the defendant no.1 to have obstructed plaintiff's labours from plucking the mangoes from the trees standing on the suit property. Answering this allegation the defendants have submitted that the concerned police from Medshi police station had been to the suit property and on verifying defendant's possession over the suit property by inspecting the sale-deed and actual possession, defendant was allowed to have yields of mango trees. Thus, the defendant has re-affirmed plaintiff's contention as to existence of mango trees on the suit property.

Admittedly, the defendant is adjoining land holder to plaintiff. However, it is not the contention of defendant that the mango trees lies in his own property and plaintiff claiming it unlawfully under the garb of suit property. On the contrary, the defendant himself claimed possession over the suit property. However, no documents supports the defendant's contention.

10] Thus, in view of documents on record, the plaintiff has prima facie proved his possession and ownership over the suit properties. Moreover, the plaintiff has prima facie established the defendant to have unlawfully obstructed his possession vide the incident dated 31/05/2015. Moreover the stand taken by the defendants while resisting the present suit, reveals the hostile nature of the defendants towards the suit property and plaintiff also.

11] The plaintiff has established his right and interest over the suit property, hence the same is required to be protected. Moreover, the plaintiff has prima facie win win situation if the trial proceeds. Certainly the plaintiff shall suffer irreparable loss by deprivation of his right and interest in the suit property, if the relief is not granted. Accordingly, I hold the application deserving to be allowed and pass the following order.

**ORDER**

- 1] The application is allowed.
- 2] The defendants and every person on their behalf, are temporarily restrained from obstructing and disturbing the peaceful possession of the plaintiff over the suit property till final disposal of the suit.
- 3] Costs in main cause. Sd/-

( A.R.Sayyed)

Date : 03/02/2016.

Joint Civil Judge (Jr.Dn.), Malegaon  
Dist. 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 the Stenographer	:	B.A.Ukey, Stenographer (L.G.)
Name of Court	:	Joint Civil Judge, [Jr.Divn.] & Judicial Magistrate, First Class, Malegaon, Dist. Washim.
Date:	:	03/02/2016.
Order signed by the Presiding Officer on	:	03/02/2016.
Order uploaded on	:	15/02/2016.