

MHYA050024242022**Order below Exh. 5 in RCS No.106/2022**

(Uttam V/S Mohan and others)

Through this application plaintiff is praying for grant of temporary injunction restraining defendants no. 1 to 3 not to disturb the possession of plaintiffs to the extent of 1 H 13 R of land survey No. 204 situated within four boundaries as mentioned in the plaint para No.1 at village Lakhi, Taluka Pusad District Yavatmal which is hereinafter mentioned as the 'suit property'. (For the sake of brevity)

2) The germinating facts of this litigation are as under :

The Plaintiff and the defendants are permanent residence of this village, and defendant No. 1 is the plaintiff's real brother, while defendant no. 2 and 3 are the children of defendant No. 1. The suit land is solely owned and possessed by the plaintiff, and the ownership rights have been transferred in the name of plaintiff in the revenue records. The suit land has been cultivating and possessed by the plaintiff for many years. The plaintiff and his family have been earning their livelihood through the suit property, and the plaintiff has no other land apart from this. Defendant No. 1 has land, and the that was divided separately from the plaintiff's. Thus, the suit land is solely owned and posses by the plaintiff and the defendants have no ownership or possession rights over it.

However, taking advantage of the plaintiff's old age, the defendants often attempt to obstruct the plaintiff's possession of the suit property. Despite being counseled each time, the defendants have not changed their stance.

3) Plaintiff further pleaded that, on 20.06.2022, the plaintiff and his wife Kamala Chavhanl, sowed soyabean and pigeon pea crops in the suit land. On 21.06.2022, around 11.00 a.m., the plaintiff and his wife were present in the suit property when defendants no. 1 to 3 came on to the land. They abused the plaintiff and said, you should immediately get out of this land and never come here again, otherwise you will be killed. The plaintiff tried to reason with them politely, but they refused to listen and threatened that they would one day take possession of the suit land. The Plaintiff lodged a report about this incidence at the rural police station, where the police registered only non cognizable offense and advised the plaintiff to seek remedy in a Civil Court.

4) Plaintiff further pleaded that, he has filed suit to prevent defendant no. 1 to 3 from, either personally or through others, obstructing the plaintiff's personal rights and enjoyment of the suit land and from taking possession of it. Therefore, plaintiff has prayed a temporary injunction to a restrain the defendants from interfering until the final decision. The balance of convenience favors the plaintiff, and granting this temporary relief will not harm the defendants. However, if this relief is denied, the plaintiff will suffer

irreparable loss.

5) Defendants resisted the present application by filling say at Exh. 10. They also contended that, the plaintiff and defendant no. 1 are real brothers. The deceased father of the plaintiff and defendant no. 1 was fusing gema chavan. Besides the plaintiff and defendant No. 1, the deceased also had other children Babulal, Raju, Sahebrao, along with two married daughters.

6) During the life time of their deceased father, he divided his agriculture land among his five sons, and in that division, the suit land, even though recorded in the plaintiff's name, was allocated to defendant no. 1 as his share. Apart from this suit land, another property located in Lakhi Tq. Pusad, with survey no. 203 is in the name of legal heirs of the late Babulal chavhan, but this land too was apportioned to defendant No. 1 as part of his share.

7) Furthermore, land with survey no. 152, totaling 4 H 10 R is jointly registered in the names of the plaintiff and the heirs of deceased. Out of this, 2 Acres of agriculture land as also been allocated to defendant No. 1 and his share. Additionally, the land in survey no. 202, 0 H and 85 R and registered in the name of Parshram Limbaji Rathod, was also divided as part of the share of defendant no. 1.

8) In this way, all the land specified above, in the name of defendant No. 1 has been received through partition and division of share, however, in the village record i.e. 7 x 12 extracts these lands

are registered in the names of the plaintiff and the defendants, even though, in reality, since 1987, the land allocated as per the partition has been under the possession, enjoyment and usage rights of defendant No. 1, as well as defendant No. 2 and 3. Defendant No. 1 to 3 have been using this suit land for agriculture purposes to sustain themselves and their families.

9) The agriculture land divided by the deceased father of defendant No. 1 was apportioned among the plaintiff, defendant No. 1, and their other brothers. However, while the land was registered under each others name, the actual possession and ownership were according to the specific allocation.

10) Survey No. 204, measuring 1 H and 13 R, was originally recorded in the plaintiff's name , but it was actually divided as part of defendant No. 1's share. Defendant No. 1 repeatedly requested the plaintiff to transfer this suit land in his name as per the partition, to which the plaintiff verbally agreed. However, the plaintiff has not followed through on the transfer. Defendant No. 1, trusting his brother, the plaintiff, relied on his word, but the plaintiff never transferred the suit land. Instead, taking advantage of the fact that, this land is still officially in his own name, the plaintiff has filed a false suit with the intention of grabbing defendant no. 1's rightful land.

11) In reality, the suit land is under the possession, rights, and enjoyment of defendant No. 1. Therefore, the plaintiff has no

rightful claim to file such a suit and seek any injunction by making false representation regarding suit property.

12) Thus, the aforesaid mentioned agriculture lands have been divided and partition among family members according to their shares, but the process of updating each person's name revenue records remains incomplete. The suit land regarding which the plaintiff has filed this suit, specifically survey no. 204 located in Lakhi Tq. Pusad, although recorded in the plaintiff's name, he is actually under the possession and enjoyment of defendant No.1. The plaintiff has filed this baseless and illegal suit by taking advantage of the fact that, the land is still recorded in his name, and it is deserved to be dismissed.

13) Lastly, defendant contended that, now, the plaintiff is attempting to seize suit land, which, if allowed, will caused great harm to defendant No. 1. The balance of convenience and prima facie evidence favor the defendant and if the temporary injunction is granted, defendant No. 1 will suffer irreparable damage and will be deprived of his rightful claims and rights. Therefore, the application for temporary injunction should be dismissed with heavy costs imposed on the plaintiff.

14) Heard learned Advocate for the plaintiff and learned Advocate for the defendants at length. Considering the rival contentions of the parties and documents on record, the following points arise for my consideration for the determination of this

application and I have recorded my findings thereon with the reasons given there below.

POINTS**FINDINGS**

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|---|--------------------------------|
| 1) Does the plaintiff has a prima facie case to grant temporary injunction as prayed ? | YES |
| 2) Whether the balance of convenience lies in favor of plaintiff ? | YES |
| 3) Whether the plaintiff will suffer irreparable loss in the event of not granting temporary injunction ? | YES |
| 4) By what order ? | Application is allowed. |

REASONS

15) The learned advocate for the plaintiffs has filed the certified copy of the 7/12 extract of the suit property, along with Gaon Namuna No. 8-A, a copy of the written complaint filed before the Gramin Police Station, a copy of the N.C. report dated 22.06.2022, a copy of the mutation entry of the suit property, a copy of the appeal filed before the S.D.M. Pusad dated 18.06.2024, xerox copies of crop insurance documents dated 08.07.2021, 21.07.2022, 13.07.2023, and 14.07.2024, and a color photocopy dated 27.09.2024.

16) Per contra, the defendants have filed the 7/12 extracts of Gut No. 597 (pertaining to Defendant No. 1), Gaon Namuna No. 8-A, 7/12 extracts of Gut No. 203, mutation entries of Gut Nos. 152

and 203, 7/12 extracts of Gut Nos. 207 and 152, copies of mutation entries of Gut Nos. 152 and 203, 7/12 extracts of Gut No. 208, Gaon Namuna No. 8-A, copies of mutation entries of Gut No. 208, 7/12 extracts of Gut No. 434, Gaon Namuna No. 8-A, mutation entry of Gut No. 434, 7/12 extracts of Gut Nos. 204 and 206, and copies of mutation entries of Gut Nos. 204 and 206.

17) The defendants have also filed affidavits by Babarao Sadashiv Chavhan (Exh. 23), Sudhkar Babulal Chavhan (Exh. 24), Umesh Sahebrao Chavhan (Exh. 25), Arunabai Ramrao Rathod (Exh. 26), Pravin Mohan Chavhan (Exh. 30), and Bhimrao Maroti Chavhan (Exh. 31). Additionally, they have submitted order copies from the Tahsildar, Pusad, dated 15.03.2024, 17.02.2023, and 25.10.2023; a copy of a panchnama dated 27.09.2023; 7/12 extracts of Gut Nos. 203 and 110; Gaon Namuna No. 8-A; Gaon Namuna No. 7-B of the suit property; a copy of a statement recorded by the police on 26.10.2023; and other relevant documents.

18) Both learned advocates have also relied on authorities from the Hon'ble Supreme Court and Hon'ble High Court, which will be discussed at the appropriate stage.

As to Points No.1 to 3 are interlinked therefore I am discussing them collectively :

19) As per settled legal position at the stage of deciding the application for temporary injunction, the Court is not required to go into the merits of the case in detail. What the Court is required to

examine is,

- i) the plaintiff has a prima facie case to go for trial.
- ii) the protection is necessary from that species of injuries known as irreparable before his legal right can be established and
- iii) that the mischief of inconvenience likely to arise from withholding injunction will be greater than what is likely to arise from granting it, in short the balance of convenience in grant of temporary injunction.

20) The discretion of the Court to grant a temporary injunction can be exercised only when these aforesaid requirement are made out by the plaintiffs. In addition this discretion can be exercised only when the plaintiffs' conduct is free from blame and they have approached before the Court with clean hands.

21) At the outset, it must be mentioned that, for deciding an application for a temporary injunction, the focus should be on establishing a prima facie case rather than delving into the detailed merits of the matter. This is because the application pertains to interim relief sought by the plaintiff, and any remedy granted is also interim in nature, pending the final decision of the main suit. Hence, considering this aspect, I shall evaluate the application, submissions, and documents filed by both parties.

22) It is important to note that, for deciding the first issue, I must determine whether the plaintiff is in possession of the suit property and whether the plaintiff has established a prima facie case. Additionally, I need to assess whether the defendants have

obstructed the plaintiff's peaceful possession of the property.

23) In the present application, the defendants have admitted that the suit property is recorded in the 7/12 extract in the name of the plaintiff. However, they contend that it is, in fact, in the possession of Defendant No. 1. On the contrary, the plaintiff has pleaded that the suit property has been in his possession since the partition effected by their deceased father, Fulsing Chavhan, in the year 1987, and he continues to remain in possession.

24) To establish a prima facie case, the plaintiff has filed the 7/12 extract of the suit property and a copy of the mutation entry recorded in his name. Upon perusal, it is evident that, as per Mutation Entry No. 2039 dated 22.12.1978, the plaintiff's name was recorded in the 7/12 extract of the suit property. This entry also indicates that the plaintiff's rights over the property were established through a partition effected by his deceased father, Fulsing Chavhan.

25) Furthermore, the plaintiff has submitted copies of crop insurance documents for the suit property covering the years 2021 to 2024. From these documents, it is prima facie evident that the plaintiff has insured crops on the suit property, including pigeon pea and soyabean, as evidenced by the insurance document dated 14.07.2024, filed along with Exh. 47. This supports the plaintiff's contention that he is cultivating the suit property.

26) Per contra, the defendants have submitted numerous

documents along with the production application. As discussed earlier, Defendant No. 1 contends that while the suit property is recorded in the 7/12 extract in the name of the plaintiff, it is actually in the possession of the defendants. Defendant No. 1 claims that during the partition, the suit property was allotted to him, but his name was not recorded in the 7/12 extract due to a mutual understanding between him and the plaintiff. However, he alleges that the plaintiff is now misusing the fact that the 7/12 extract reflects the plaintiff's name and is attempting to dispossess the defendants from the suit property.

27) To substantiate their claim of possession, the defendants have filed numerous 7/12 extracts of other gut numbers and copies of mutation entries, showing that other agricultural lands were recorded in the names of Defendant No. 1 and his siblings through the partition deed. Regarding the suit property, the defendants have also filed affidavits from neighbors. Upon perusal, these affidavits state that Defendants No. 1 to 3 are in possession of the suit property.

28) Additionally, the defendants submitted a copy of an order dated 15.03.2024 issued by the Tahsildar, which indicates that directions were given to the Talathi in 2023 and 2024 to record the name of Defendant Pawan Mohan Chavhan as cultivating the suit property. The defendants also filed another order from the Tahsildar, dated 25.10.2024, directing that the name of Defendant Pawan

Mohan Chavhan be recorded in Gaon Namuna No. 7-B as cultivating the suit property.

29) Furthermore, the defendants produced a copy of Gaon Namuna No. 7-B, in which the name of Defendant No. 3, Pawan Mohan Chavhan, is recorded as cultivating the suit property in the year 2024.

30) After perusing the documents mentioned above, along with those filed by the plaintiff, it is evident that the plaintiff's name was recorded in the 7/12 extract of the suit property following a partition that took place in 1978, and subsequent mutation was carried out in the plaintiff's name. The plaintiff has also filed a copy of crop insurance, which indicates that the plaintiff cultivated soyabean on the suit property in 2024.

31) The defendants have contended that they are in possession and cultivating the suit land. They have also filed an order from the Tahsildar, Pusad, to support their claim. However, as noted earlier, all such facts can only be thoroughly examined after the evidence of both parties is brought on record. It is important to reiterate that, in deciding an application for a temporary injunction, the court does not examine the detailed merits of the case. Prima facie, the record indicates that the suit property was transferred to the plaintiff through partition, and the mutation entry was duly recorded in his name. Furthermore, the documents suggest that the plaintiff is in possession of the suit property.

32) For supporting the pleading of plaintiff he has filed authority of ***Hon'ble Panjab and Hariyana High Court Sukhwant Singh Vrs. Divisional Forest Officer and ors. (2010) 3 ICC 473.*** It is held that *no injunction can be issued in favor of a trespasser and against the true owner.*

33) Upon perusing the aforementioned authority, the Hon'ble High Court has held that an injunction cannot be granted in favor of trespassers. In the present case, the suit property is recorded in the plaintiff's name, and a mutation entry was made long ago. The defendants are merely attempting to assert possession without substantive proof. Therefore, considering the legal ratio of the above-mentioned judgment, the plaintiff has successfully established a prima facie.

34) The Ld. Advocate of the plaintiff also relied on the Authority of ***Hon'ble Bombay High Court. Betala Agro Tech through its proprietor Kamlesh Rajendra Betala Vrs. State of Maharashtra and ors. Writ petition no. 892 of 2024. (2024) BHC – AS : 13017.*** The Hon'ble High Court held that, *"entries made in revenue record are only fiscal purposes which neither create nor extinguish right of person in immovable property Therefore, proceedings under the provisions of the Maharashtra land revenue code, 1966 can not be equated with the proceedings arising out of judgment and decree*

passed by the Civil Court. Hence, the impugned order cannot be sustained."

35) Considering the legal ratio, it is noted that the Tahsildar, Pusad, issued an order dated 25.10.2024, recording the name of Defendant No. 3 in the 7/12 extract of the suit property for cultivating the land in 2024. However, as per the legal principle, a name recorded in the revenue records does not by itself create any rights over immovable property.

36) In the present case, prima facie, the documents show that the plaintiff's name was recorded in the 7/12 extract of the suit property. Additionally, the mutation entry was made in his name, and the suit property came into his ownership through a partition, a fact admitted by the defendants. Therefore, based on the Supra Authority and the documents on record, it is evident that the plaintiff is in possession of the suit property.

37) Furthermore, the record reflects that in the Pera Patrak of the suit property for the year 2004-2005, the plaintiff's name was recorded. Notably, this Pera Patrak was not challenged by the defendants.

38) After analyzing the documents on record and the facts of the case, it is evident prima facie that the plaintiff is in possession of the suit property.

39) Per contra the Ld. Advocate of defendant also relied on the Authority of ***Hon'ble Karnataka Hight Court Shir S.C.***

Gangadharaiah Vs Remco (Bhel) on 17 January, 2018, held that,

“ apart from what is discussed above another important point that, needs observation is as to who was in possession of suit property as on the date of suit ? The actual possession is determining factor.”

40) After going through the ratio of the Supra authority and facts of the case it is seen from the documents prima facie that, plaintiff is in possession of the suit property for proving the same he has filed crop insurance documents dated 27.09.2024 therefore, prima facie it is reflected that, when the suit is filed plaintiff is in possession of suit property. Therefore, I am respectfully stated that, above supra authority is not helpful to the defendants.

41) To address the second point—whether the balance of convenience lies in favor of the plaintiff—it has already been discussed that the plaintiff's name is recorded in the 7/12 extract of the suit property after the mutation entry was made in his name. The defendants have also admitted that a partition took place between the plaintiff, Defendant No. 1, and their siblings. Prima facie, based on the documents filed by the plaintiff, it appears that the balance of convenience lies in his favor.

42) For the third point—whether the plaintiff will suffer irreparable loss if the present application is not allowed—the plaintiff has submitted a copy of the N.C. report dated 22.06.2022. Prima facie, the report indicates that the defendants obstructed the plaintiff's possession of the suit property. The plaintiff has also

provided evidence that he is cultivating crops such as soybean and pigeon pea on the property.

43) The learned advocate for the defendants argued that the plaintiff mentioned the date of the incident as 21.06.2022 in the plaint, while the N.C. report states the incident occurred on 22.06.2022. They contend that this discrepancy suggests the plaintiff has filed a false N.C. report. However, upon examining the N.C. report, prima facie, it appears that on 22.06.2022, the defendants obstructed the plaintiff's possession and used offensive language. Given these prima facie findings, it is proper and necessary to protect the plaintiff's possession of the suit property until the final disposal of the present suit. Failure to do so could cause the plaintiff irreparable loss. Thus, the plaintiff has prima facie proved his case, and accordingly, his application succeeds.

ORDER

- 1] The application stands allowed
- 2] Defendants or anybody on their behalf are thereby temporarily restrained from obstructing plaintiff's possession over the suit property till the disposal of suit.
- 3] Cost in Cause.

Date : 06.01.2025

(Z. Z. Quadri)
6th Civil Judge, (Jr.Dn),
Pusad