

**ORDER BELOW EXHIBIT 5**

(Passed on 23/06/2023)

This is an application filed by the plaintiff for grant of temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure Code (for short “CPC”) for restraining the defendants from disturbing his peaceful possession over the suit property which consists of property number 243 situated at mouza: Jawala, Tahsil: Darwha District: Yavatmal having the ad-measuring area of 1.18 hectors lying towards East.

02. The suit property was purchased by the plaintiff by way of registered sale deed on 2 December 2020 and was put into possession of it on the same day. The plaintiff is a minor and hence he is represented by his next friend and power of attorney holder. The plaintiff had prepared the suit property for cultivation and had shown crops like cotton and pulses over it. The defendants are having their field property adjacent to the suit property. The defendants tried to disturb the possession of the plaintiff on 21 August 2021 by threatening the labourers working over it despite having no right to do so. The defendant no. 1 and 2 be restrained from disturbing his possession. He has prima facie case in his favour and would suffer an irreparable loss in the event, the relief of temporary injunction is not granted in his favour. There is balance of convenience in his favour and there would be no prejudice to the defendant number 1 and 2. He prayed for allowing the application.

03. The defendants had filed his written statement at exhibit 15 and submitted that the plaintiff is not the owner of suit property. They submitted that the Field of the plaintiff was originally owned by Ramlal

Tungar and Uday Tungar and at the time of conducting the conciliation proceedings, an incorrect map came to be prepared by the TILR Office. They received the notice of measurement of the suit property and were surprised to know that the office had prepared an incorrect map. The defendants are in possession of their land since 1992, whereas the plaintiff had purchased the suit property in the year 2020. The sale deed executed in favour of plaintiff is illegal and hence, it cannot confer any rights upon him. The land which was given in possession of plaintiffs still lies in his possession, and there is no encroachment over it. The plaintiff came to know that some portion of the field of defendants lies in the position of plaintiff and hence, the Plaintiff thought of taking disadvantage of this position and preferred to file the present suit. There is no *prima facie* case in favour of the Plaintiff and the balance of convenience also doesn't lie in his favour. The application is liable to be rejected.

04. The following points arise for my consideration and I record my findings against each of them with reasons therefor.

| Sr. No. | Points                                                                                                                      | Findings         |
|---------|-----------------------------------------------------------------------------------------------------------------------------|------------------|
| 1       | Whether the applicant/plaintiff proves that they have a <i>prima-facie</i> case in his favour?                              | In the negative. |
| 2       | Whether the applicant/plaintiff proves that they would suffer irreparable loss, if injunction is not granted in his favour? | In the negative. |
| 3       | Whether the applicant/plaintiff proves that balance of convenience lies in his                                              | In the negative. |

favour?

4 What order?

Application  
rejected.

### **REASONS**

#### **As to points no. 1 to 3**

05. All the points are inter-connected and hence, they are taken for discussion together. The plaintiff relied upon various documents such as copy of the power of attorney, 712 extract, mutation register, copy of sale deed, map. It was submitted by learned advocate for plaintiff that the suit property is being endangered by the conduct of the defendants and they are trying to dispossess the plaintiff who is a minor and who is cultivating the suit property on the strength of other persons. The defendants were cautioned about their conduct but they did not paid any heed to the request of the plaintiff. They are causing obstruction to the right of the plaintiff and hence, they are required to be restrained from doing so.

06. Learned advocate for the defendant submitted that the plaintiff is in possession of the suit property to the same extent as was delivered to him after the execution of the sale deed. There is no unlawful conduct on the part of the defendants and they are cultivating their own land and had no concern with the suit property belonging to the plaintiff. The plaintiff is unnecessarily filing the applications and want to defeat their right. The

application is therefore, devoid of merits and is liable to be rejected as the plaintiff has not proved the existence of essential ingredients for granting temporary injunction.

07. The most important question which needs to be decided at this stage of the suit is about the fact of damage or waste that might be caused to the suit property by the conduct of the defendants and about substance in the contention about the alleged apprehension of dispossession in the mind of the plaintiff. It is well settled that Order 39 Rule 1 and 2 of the CPC clearly lay down that the threat to possession or invasion should be proved by affidavit or by any other material. In the present suit, the plaintiff has narrated about an incident that took place on 21 August 2021, where it was alleged that an obstruction was caused by the defendants to the labourers working over the field. It was submitted that the suit property was having crops standing over it and the defendants claimed that they shall take away the crops. The plaintiff has not filed any document to show that he was in the state of intimidation after the alleged threat given by the defendants. The affidavits of neighbouring cultivators as well as the labourers who were working on the suit property are not filed on record. There is no report lodged at the police station of this incident. The map which is filed on the record also does not reflect any encroachment over the suit property at the hands of defendants except some portion of the suit property is stated to be a gauthan land. It appears that there may be some boundary dispute between the parties, but it is not shown by any

sufficient material that the defendants had caused any sort of invasion over the rights of the plaintiff. They claim that the plaintiff is having possession over the same piece of land which was purchased by him. It is well settled principle of law that a temporary injunction shall not be granted only because it appears to be lawful but rather the plaintiff should establish a prime facie case in his favour and it must be shown that irreparable loss would be occasioned by the conduct of the defendants, thereby causing any damage, waste to the suit property. The Plaintiff has failed to do so and hence, the essential ingredients for grant of relief of temporary injunction do not stand proved satisfactorily and hence, I answer point no.1 to 3 in the negative. The application below exhibit 5 is hereby rejected.

08. **As to point no.4 –** The plaintiff has failed to prove prima facie case in his favour and is therefore, not entitled to the equitable relief of temporary injunction. Hence, in answer to point no. 4, I proceed to pass the following order.

### **ORDER**

The application below exhibit 5 is hereby rejected with costs.

[M.M.Kalyankar]

Date : 23/06 /2023

2<sup>nd</sup> Jt.Civil Judge Jr. Dn., Darwha