

Order Below Application Exh.5
(Delivered on 08th March, 2017)

This is an application under Order 39 Rule 1, 2 of the Code of Civil Procedure, 1908 (for short 'the C.P.C.') whereby the plaintiffs have prayed to restrain defendant Nos.1 and 2 from interfering with the peaceful cultivating possession of the plaintiffs and defendant Nos.3 to 9 over the agricultural land.

2. The case of the plaintiffs in brief is as under :

The plaintiffs and defendant Nos.3 to 9 are legal heirs of Sambhaji Tukaram Gajbhiye. On 26.05.1987 the said Sambhaji Tukaram Gajbhiye purchased agricultural land from Survey No.13/1, at present Block No.38 admeasuring 1 H 59 R (for short 'the suit property') from Karnu Bhiva Bodhane and his son Namdev Bodhane. Since then the said Sambhaji Tukaram Gajbhiye possessed, cultivated the said land. Accordingly, mutation entry No.494 was recorded. The said Sambhaji Tukaram Gajbhiye died in the year 1999. Thereafter the plaintiffs and defendant Nos.3 to 9 possess the suit property. Defendant Nos.1 and 2 purchased agricultural land from Karnu Bhiva Bodhane from Survey No.13/3, at present Block No.41. Defendant Nos.1 and 2 possess it.

3. Defendant No.1 with ill intention to grab the suit property lodged false complaint dated 18.06.2012 with the Police Station at Wani against plaintiff No.1, wife and son of plaintiff No.1. Defendant No.1 alleged in that complaint that plaintiff No.1, wife and son of plaintiff No.1

tried to interfere with the physical possession over Survey No.13/3 claiming it to be Block No.38, plaintiff No.1, wife and son of plaintiff No.1 are forcibly cultivating it since 18.06.2011. Thus, defendant No.1 has admitted to have lost possession over Survey No.13/3 claiming it to be Block No.38. Therefore, the plaintiffs have prayed for as mentioned above.

4. Defendant No.2, though, served with the suit summons, did not appear. Thus, the suit is proceeding ex-parte against defendant No. 2. Defendant No.1 has filed reply at Exh.16. Defendant No.1 has contended that he has given short reply (Exh. 16) to avoid repetition, therefore, his written statement (Exh.17) also be considered. Defendant No.1 admits that the said Sambhaji Tukaram Gajbhiye purchased agricultural land from Karnu Bhiva Bodhane, defendant Nos.1 and 2 purchased agricultural land from Karnu Bhiva Bodhane and Namdev Bodhane. Accordingly, Sambhaji Tukaram Gajbhiye, defendant Nos.1 and 2 got possession of their respective agricultural lands. Defendant No.1 contends that both the sale-deeds were executed on 26.07.1987. Since then defendant Nos.1 and 2 possess it and Sambhaji Tukaram Gajbhiye possessed his land.

5. There was mistake in sale-deeds in respect of survey numbers. Inadvertently Survey No.13/3 was mentioned in sale-deed of defendant Nos.1 and 2. So also inadvertently Survey No.13/1 was mentioned in sale-deed of Sambhaji Tukaram Gajbhiye. However, area of the lands was correctly mentioned in the sale-deeds. That is how consideration of

Rs.17,000/- for agricultural land of 6 Acres has been mentioned in the sale-deed of defendant Nos.1 and 2 and consideration of Rs.10,000/- for agricultural land of 4 Acres has been mentioned in the sale-deed of Sambhaji Tukaram Gajbhiye. Block No.38 was allotted to Survey No.13/1, Block No.41 was allotted to Survey No.13/3. It means that 6 Acres land in the possession of defendant Nos.1 and 2 is from Block No.38 and 4 Acres land in the possession of Sambhaji Tukaram Gajbhiye is in Block No.41. On 09.05.2011 defendant No.1 carried measurement through Government office and realized it. Deputy Superintendent has reported the same in his report dated 10.06.2011.

6. Defendant No.1 contends that defendant Nos.1 and 2 purchased 6 Acres agricultural land from Survey No.13/1 for a consideration of Rs.17,000/- and Sambhaji Tukaram Gajbhiye purchased 4 Acres agricultural land from Survey No.13/3 for a consideration of Rs.10,000/-. Land from Survey Nos.13/1-A, 13/2 was acquired for road. Therefore, land from Survey No.13/1 is on the western side, land from Survey No.13/3 is on eastern side of that road.

7. Sambhaji Tukaram Gajbhiye used entire 4 Acres land for Brick Kiln. In this backdrop and mistake of block numbers the plaintiffs on the basis of 7/12 extracts started to claim ownership over 6 Acres land of defendant Nos.1 and 2. One of the predecessor in title of defendant Nos. 1 and 2 namely Karnu Bhiva Bodhane is dead and his son Namdev Bodhane is alive. Therefore, on 18.06.2011 Namdev Bodhane executed

an affidavit contending thereby that he and his father on 26.07.1987 had sold 6 Acres of agricultural land. Defendant Nos. 1 and 2 have denied all the allegations of the plaintiffs. Defendant No.1 has prayed to reject the application.

8. Considering the pleadings and documents available on record, following points arise for my determination. I have recorded my findings on each of it for the reasons stated below.

<u>P O I N T S</u>	<u>F I N D I N G S</u>
1) Whether the plaintiffs prove their case prima facie ?	Yes.
2) Whether balance of convenience lies in favour of the plaintiffs?	No.
3) Whether irreparable loss will be caused to the plaintiffs if temporary injunction is not granted in favour of the plaintiffs ?	No.
4) What order ?	As per final order.

REASONS

AS TO POINT NOS.1 TO 3 :

9. It is the case of the plaintiffs that their predecessor had purchased certain agricultural land and defendant Nos.1 and 2 have also purchased agricultural land. Predecessor of the plaintiffs possessed his land, after his death the plaintiffs possess that land. Defendant Nos.1 and

2 possess the land which they had purchased. In this regard defendant Nos.1 and 2 have no dispute. Defendant Nos.1 and 2 have clarified that predecessor of the plaintiffs, defendant Nos.1 and 2 have purchased agricultural land from a common person. Defendant Nos.1 and 2 clarify that there was inadvertent mistake while mentioning survey numbers of those lands in those sale-deeds. Defendant Nos.1 and 2 allege that the plaintiffs are trying to take disadvantage of that inadvertent mistake.

10. The plaintiffs claim that they are owner of land from Survey No.13/1 and that land is from Block No.38. As against this, defendant nos.1 and 2 claim that they are owner of land from Survey No.13/1 and that land is from Block No.38. Defendant Nos.1 and 2 further contend that the mistake of survey numbers has been crept in inadvertently and that mistake has been corrected on 18.06.2011. Considering case of the plaintiffs and defence of defendant Nos.1 and 2, the dispute requires to be resolved on the basis of documents available on record, affidavit available if any.

11. The plaintiffs have filed various documents vide list of document (Exh.3). However, defendant No.1 has not filed any document. Document at Exh.3/2 is mutation No.494 whereby name of Sambhaji Tukaram Gajbhiye was recorded in revenue records in respect of land from Block No.38 admeasuring 1 H 60 R, document at Exh.3/3 is mutation No.930 whereby names of legal heirs of deceased Sambhaji Tukaram Gajbhiye were recorded in revenue records in respect of land

from Block No.38 admeasuring 1 H 60 R and other two lands, 7/12 extract (Exh.3/4) is of Block No.38 and name of Sambhaji Tukaram Gajbhiye has been mentioned therein in both columns from 1985–86 to 1994–95, 7/12 extract (Exh.3/5) is of Block No.38 and name of Sambhaji Tukaram Gajbhiye has been mentioned therein in both columns from 1995–96 to 1998–99 and thereafter from 1999–2000 to 2004–2005 name of plaintiff No.1 is mentioned in column No.12, 7/12 extract (Exh.3/6) is in respect of land from Block No.38 and name of plaintiff No.1, plaintiff No.3 has been mentioned in column No.12 for a period of 2005-06 to 2009–10, 7/12 extract (Exh.3/7) is of Block No.38 for 2010-11 and names of the plaintiffs have been mentioned in column No.7, 7/12 extract (Exh.3/8) is of Block No.38 for 2011-12 and names of the plaintiffs have been mentioned in column No.7, 7/12 extract (Exh.3/15) is of Block No.41 for 2009-10 and names of defendant Nos.1 and 2 have been mentioned in column No.7, original sale-deed (Exh.3/21) executed in favour of Sambhaji Tukaram Gajbhiye contains a recital that Sambhaji Tukaram Gajbhiye purchased 1 H 59 R land from Survey No.13/1. Record of right prior to consolidation (Exh.3/22) states that Survey No.13/1 is from Block No.38 whereas survey No.13/3 is from Block No.41.

12. The plaintiffs have filed all those documents and those documents prima facie revealed that Sambhaji Tukaram Gajbhiye had purchased land from Survey No.13/1 and it is now in Block No.38. Those documents also reveal that earlier Sambhaji Tukaram Gajbhiye possessed

land from Survey No.13/1 and thereafter plaintiff No.1, plaintiff No.3 possess that land. Considering the stage of the case these documents can be relied upon unless there are other documents. Defendant No.1 has not filed any document to disbelieve the documents filed by the plaintiffs. Therefore, it follows prima facie that the plaintiffs possess land from Survey No.13/1 now from Block No.38.

13. Defendant Nos.1 and 2 contends that survey numbers of land purchased by Sambhaji Tukaram Gajbhiye, defendant Nos.1 and 2 have been wrongly mentioned in both the sale-deeds. Defence of defendant Nos.1 and 2 is that they have purchased 6 Acres land from Survey No.13/1 but in their sale-deed Survey No.13/2 is inadvertently mentioned. Defendant Nos.1 and 2 go on saying that the said inadvertent mistake has been corrected on 18.06.2011. They claim that on 18.06.2011 one of the predecessor in title has executed affidavit and the said mistake is now rectified. However, defendant No.1 did not file copy of that affidavit on record. Had it been filed the case would have been different. In the absence of that affidavit it cannot be believed that one of the predecessor in title has admitted mistake and corrected it too.

14. Defendant Nos.1 and 2 contend that defendant No.1 on 09.05.2011 got measured the land from Government office. On 10.06.2011 Deputy Superintendent, Land Records, Wani has reported that defendant No.1 possesses land from Block No.38 and the land possessed by Sambhaji Tukaram Gajbhiye and his legal heirs is from Block

No.41. However, defendant No.1 did not file copy of that report, map of measurement or any other material to rely upon the alleged measurement dated 09.05.2011 and the alleged report dated 10.06.2011. Therefore, it cannot be believed that the plaintiffs possess land from Block No.41.

15. There are some documents filed by the plaintiffs and which are not disputed by defendant No.1. Those documents are at Exh.3/23, 3/24, 3/25. Document at Exh.3/23 is an order passed on 10.06.2013 by Sub Divisional Magistrate under Section 145 of the Code of Criminal Procedure. Document at Exh.3/24 is copy of judgment passed by the Hon'ble Sessions Judge of revision of order dated 10.06.2013. Document at Exh.3/25 is copy of order passed by Hon'ble the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Writ Petition No.560/2013, dated 22.01.2015.

16. Defendant No.1 contends that he has paid consideration of Rs.17,000/- and Sambhaji Tukaram Gajbhiye had paid consideration of Rs.10,000/-. There is no doubt that on the basis of consideration paid by them it follows that defendant No.1 must have purchased greater land than Sambhaji Tukaram Gajbhiye. It is because the lands are close to each other, vendee is one and the same person and both the sale-deeds were executed on one and the same day. However, defendant No.1 did not place on record his sale-deed. Therefore, it cannot be ascertained as to whether he purchased greater land than Sambhaji Tukaram Gajbhiye. Even if it is taken as true it does not help to ascertain that there was

mistake of mentioning survey numbers in sale-deeds.

17. There appears no dispute that on account of dispute between plaintiff No.1 and two others and defendant No.1 proceedings were initiated under Section 145 of the Code of Criminal Procedure. In that proceedings Sub Divisional Magistrate has found that defendant No.1 possesses land from Block No.38. In operative order clause-I it has been mentioned that after considering documents and spot inspection conducted by him, he found that defendant No.1 possesses land from Block No.38. In that proceedings there was statement of Namdev Bodhane and affidavit of Namdev Bodhane, panchanama of measurement dated 10.06.2011 was also filed. On the basis of it Sub Divisional Magistrate passed the said order. However, defendant No.1 did not place on record statement of Namdev Bodhane, affidavit of Namdev Bodhane, panchanama of measurement dated 10.06.2011. Therefore, I cannot draw the same inference as drawn by Sub Divisional Magistrate.

18. The basis of passing judgment in revision of order of Sub Divisional Magistrate is record and proceedings pending before Sub Divisional Magistrate. At the cost of repetition I mention here that defendant No.1 neither filed those documents relied upon by Sub Divisional Magistrate nor any other document to substantiate his claim. I have to reach to conclusion on the basis of documents placed before me. As mentioned earlier the documents produced by the plaintiffs support to the case of the plaintiffs. Therefore, prima facie it follows that the

plaintiffs possess land from Survey No.13/1, Block No.38. Therefore, I answer point No.1 in the affirmative.

AS TO POINT NOS.2 AND 3 :

19. The plaintiffs claim that defendant No.1 has admitted in his complaint to police station that plaintiff No.1, wife and son of plaintiff No.1 are forcibly cultivating the land since 18.06.2011. The plaintiffs rely upon it to argue that defendant No.1 claims to have admitted lost of possession of his land. The plaintiffs did not place on record any such document. Moreover, the plaintiffs cannot pray for equitable and discretionary relief on the basis of forcible possession.

20. There is no doubt that Sub Divisional Magistrate in a proceeding under Section 145 of the Code of Criminal Procedure has held that defendant No.1 possesses land from Block No.38, by passing order dated 10.06.2013. There is also no doubt that the said order is partly confirmed in revision before the Hon'ble Sessions Judge, by passing judgment dated 27.08.2013. In that partly confirmation finding that that defendant No.1 possesses land from Block No.38 is confirmed. The Hon'ble High Court of Judicature at Bombay, Bench Nagpur, Nagpur in Criminal Writ Petition No.560 of 2013 has confirmed the judgment of Sessions Court. The Hon'ble High Court has mentioned in the order that it is made clear that extension of interim order dated 05th September, 2013 shall not be considered by the Civil Court below as equivalent to giving a prima facie finding about the possession of any of the parties,

which will have to be determined independently on merits of the case that may be instituted before a Civil Court.

21. On the basis of documents produced before me and on the basis of failure of defendant No.1 to produce documents before me, I have recorded my prima facie finding that the plaintiffs possess land from Block No.38. However, those three orders can be considered to assess balance of convenience of passing injunction order.

22. It appears from record that the order passed by Hon'ble Bombay High Court is not challenged. It has attained finality. Thus, three authorities authoritatively found that defendant No.1 possesses land from Block No.38. In such situation I find that balance of convenience does not lie in favour of the plaintiffs. Moreover, the plaintiffs in respect of cause of action alleges that defendant No.1 with an ill intension to grab land in the possession of the plaintiffs lodged a false police report dated 18.06.2012 with the Police Station at Wani against plaintiff No.1 and wife and son of plaintiff No.1. It has been alleged in that complaint that plaintiff No.1 and wife and son of plaintiff No.1 have tried to to interfere with physical possession of land from Survey No.13/3 claimed to be Block No.38. Thus, the plaintiffs do not allege at all that the defendants have ever tried to disturb or disturbed possession of the plaintiffs over the land which the plaintiffs possess. Therefore, I find that balance of convenience does not lie with the plaintiffs. Thus, there is no threat which can be considered having potential to cause irreparable loss to the land

possessed by the plaintiffs. The plaintiffs failed to demonstrate as to how irreparable loss would cause to them in case injunction is refused. Therefore, I answer point Nos.2 and 3 in the negative.

AS TO POINT NO.4 :

23. In view of findings of point Nos.2 and 3, the application requires to be rejected. Accordingly, in response to point No.4, I pass following order.

ORDER

The application is rejected.

Dated : 08.03.2017.

(R. S. Wankhede)
Civil Judge (Jr.Dn.)
Wani, Dist. Yavatmal.