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**IN THE COURT OF ADDL. JUDGE SMALL CAUSES COURT &
Jt. CIVIL JUDGE SENIOR DIVISION, PUNE.**
(Presided over by Mrs. M. S. Sahasrabudhe)

SPL. CIVIL SUIT NO. 539/2013

Exh.No. 101

- 1] **Shri. Pandharinath Vishwanath Hole**
Age : 61 Yrs., Occupation : Agriculture,
(For himself and for plaintiff No. 2 to 6).
- 2] **Shri. Vilas Vishwanath Hole**
Age : 54 Yrs., Occupation : Service,
- 3] **Shri. Dilip Vishwanath Hole**
Age : 50 Yrs., Occupation : Agriculture,
- 4] **Shri. Ravindra Vishwanath Hole**
Age : 48 Yrs., Occupation : Service,
- 5] **Shri. Rajendra Eknath Hole**
Age : 44 Yrs., Occupation : Service,
- 6] **Shri. Vijay Eknath Hole**
Age : 42 Yrs., Occupation : Business,
All R/at S. No. 13, Satavwadi, Hadapsar,
Pune.

... Plaintiffs.

Versus

- 1] **Pandurang Babu Tupe**
Age : 42 Yrs., Occu. : Agriculture,
R/at Hingane Ali, Room No. 256,
Hadapsar, Pune

2] **Shri. Datta Bansi Barguje**
Age : 34 Yrs., Occu. : Agriculture,
R/at 151/3, Magarpatta, Mundhawa Road,
Hadapsar, Pune **... Defendants.**

Shri. V. V. Mahadik, Advocate for plaintiffs.
Shri. S. B. Pawar, Advocate for defendant No.2.

**SUIT FOR DECLARATION AND
PERMANENT INJUNCTION.**

J U D G M E N T
[Delivered on : 06/05/2022]

The present suit is filed for declaration that plaintiffs are owner and for permanent injunction. Similarly, counter claim is filed by defendant No. 2 for declaration that he is owner and for permanent injunction.

Suit property in plaint :-

2] Agricultural land admeasuring about 17 R land situated in Survey No. 151/16 (old Hissa No. 11+21A) of Mauje Hadapsar, Tal. Haveli, Dist. Pune which is bounded as under :-

Towards East	:-	Hadapsar-Mundhwa Road.
Towards West	:-	Remaining portion of Survey No. 151/16 owned by Shri. Kate.
Towards South	:-	Weighing Scale.
Towards North	:-	Internal road and thereafter land sold by Shri. Namdeo Hole.

The aforesaid property is hereinafter referred to as '*suit property in plaint*'.

Suit property in Counter claim :-

3] Agricultural land admeasuring about 12 R land situated in Survey No. 151/14+15D of Mauje Hadapsar, Tal. Haveli, Dist. Pune which is bounded as under :-

Towards East	:-	Hadapsar-Mundhwa Road.
Towards West	:-	Remaining portion of Survey No. 151/16 owned by Shri. Kate.
Towards South	:-	Weighing Scale.
Towards North	:-	Internal road and thereafter land sold by Shri. Namdeo Hole.

The aforesaid property is hereinafter referred to as '*suit property in counter claim*'.

Undisputed facts :-

4] It is not disputed that plaintiffs are owners of property situated in S. No. 151/16 and defendants are claiming ownership in property situated in S. No. 151/14+15D. There is no dispute between the parties that both these properties are situated at different places in S. No. 151. However, there is dispute about location of both the aforesaid survey numbers. Both the parties are coming up with the case that their respective properties are situated within the same boundaries mentioned above.

5] There is no dispute between the parties that S. No. 151 since year 1934 was subdivided more than once. In the year 1964 S. No. 151 was again sub divided and 7/12 extract of suit property in the counter claim was cancelled. Defendant has challenged the said entry in RTS Appeal No. 48/10 and he got revived the 7/12 extract of the

suit property in the counter claim. It is not disputed that defendant No. 1 had sold out suit property in counter claim to defendant No. 2.

Brief facts of the case of the plaintiff -

6] It is the contention of the plaintiffs that they are owners of suit property in the plaint and it is their ancestral property. They are in possession of the said property since the time of their forefathers. Initially, in the year 1908 the ancestor of the plaintiffs namely Shri. Balaji Pandu Hole has purchased the property admeasuring about 4 acre 30 Gunthas situated in Survey No. 151/11+21. In the year 1934 the said property was subdivided and entry to that effect was taken in the revenue records vide mutation entry No. 2594. After death of Balaji name of his son Bolhu was mutated as owner of the entire property. In the year 1939 property owned by Shri. Balaji was partitioned amongst his three legal heirs. Entry of this partition was taken in the revenue records vide mutation entry No. 3005. After partition 1/3rd of the aforesaid property admeasuring about 1 Acre 23 R, came to the share of grand father of the plaintiff Shri. Bolhu Bala Hole. Thereafter, Sr. No. 151 was again subdivided and property which came to the share of grand father of the plaintiffs was given Sr. No. 151/16. Entry of this subdivision was recorded in the revenue record vide mutation entry No. 6068. Subsequently, Bolhu Bala Hole has transferred the property standing in his name, in the name of his two sons Vishwanath i.e. father of plaintiff No. 1 to 4 and Eknath i.e. father of plaintiff Nos. 5 and 6. After death of Vishwanath and Eknath names of plaintiffs were taken on record as their legal heirs vide mutation entry No. 15824 and 15928.

7] Out of the property standing in their name, plaintiffs have

sold out 48 R land to various persons and the purchasers have even constructed their houses over the property. At present the plaintiffs are left out with only 17 R land and this land is in their possession till date. Defendants have no concern with the said property. Defendant No. 1 is claiming ownership over suit property in counter claim situated in Sr. No. 151/14+15D.

8] Sr. No. 151 was subdivided in the year 1964 and vide mutation entry No. 6068, 7/12 extract of Sr. No. 151/14+15D of the defendants was cancelled. Defendant No. 1 thereafter, with an intention to revive their 7/12 extract had filed application before S.D.O. The said application was decided against him. Subsequently, the defendant No. 1 have filed appeal before Deputy Collector and in collusion with the staff of the office, this defendant succeeded in getting prepared 7/12 extract of suit property in counter claim, in his name. The plaintiffs were not parties in any of these proceedings. Immediately after getting knowledge of decision in favour of the defendant, plaintiffs have filed appeal for cancellation of the 7/12 extract.

9] The defendant No. 1 on the basis of 7/12 extract in his name has started claiming himself to be the owner of suit property in plaint and with an intention to sale out the same, he started showing the property to various persons. The plaintiffs immediately published a public notice, informing public at large not to enter any transaction with the defendant with respect to suit property in the plaint. On 05/09/2010 the defendant No. 1 attempted to take forceful possession of the suit property in the plaint however plaintiff resisted him. Defendant No. 1 was never in possession of the suit property. Taking

disadvantage of newly prepared 7/12 extract in his name, defendant No. 1 illegally executed sale deed of the suit property in plaint in favour of defendant No. 2. The defendants illegally are claiming ownership over suit property in plaint and they are trying to dispossess the plaintiffs. Hence, plaintiffs were constrained to file the present suit.

Defence :-

10] Defendant No. 1 has combated the suit by filing written-statement below Exh. 28 and defendant No. 2 has opposed the same by filing his written-statement cum counter claim below Exh. 58.

11] It is the contention of defendants that the suit property in the counter claim is situated within the four boundaries mentioned above. The said property was purchased by father of defendant No. 1 Shri. Babu Raghu Tupe from one Sopan Pandu Tupe for the period of five years. Vide mutation entry No. 2942, name of father of defendant No. 1 was mutated as owner of suit property in counter claim. After period of five years neither Sopan Pandu Tupe nor his legal heirs got reverted the sale deed in name of father of defendant No. 1 as such he became absolute owner of the said property. At the relevant time, area of S. No. 151/14 + 15D was 16R. Subsequently, 4 R land was acquired and father of the defendant No. 1 and thereafter defendant No. 1 was in possession of 12 R of land i.e. suit property in counter claim.

12] It is further contention of the defendants that the 7/12 extract of the suit property in counter claim was illegally cancelled by revenue authority and hence defendant No. 1 has challenged the said entry before appellate authorities and he got revived 7/12 extract of

suit property in counter claim. Suit property in the plaint is situated on the other side of the road and the plaintiffs are wrongly claiming ownership over suit property in the counter claim. Subsequently, defendant No. 1 has sold suit property in counter claim to defendant No. 2 and he is in possession of suit property in counter claim. According to the defendants, suit is not tenable and it needs to be dismissed with compensatory costs.

Brief facts of the counter claim filed by defendant No. 2 -

13] Defendant No. 2 is the subsequent purchaser, he has adopted written-statement of defendant No. 1 and on the same line he is seeking declaration that he is owner of the suit property in the counter claim and for permanent injunction restraining the plaintiffs from interfering with his possession over suit property in counter claim. It is contention of this defendant that the plaintiffs by taking disadvantage of the wrong revenue entries and they have fraudulently filed the present suit. Defendant No. 1 by filing revenue appeal got corrected the said revenue entries and his name was mutated as owner and possessor of suit property in counter claim.

14] Defendant No. 2 after verifying all the necessary documents has ascertained the ownership and possession of defendant No.1 over suit property in counter claim and have purchased the same. The possession of suit property in counter claim was delivered to defendant No. 2 at the time of execution of the sale deed. It is his contention that plaintiffs are not aware where their property is situated. They have no concern with the suit property in counter claim. The plaintiffs are illegally interfering with the possession of defendant No. 2 over suit property in the counter claim and hence he

was constrained to file the present counter claim.

15] The plaintiff has combated the counter claim by filing written-statement below Exh. 70. The plaintiff has denied the entire contentions in the counter claim and he has further reiterated the entire contents of the plaint. He has further submitted that he has challenged the order of Deputy Collector in RTS Appeal No. 48/10 before Revenue Commissioner vide Revision No. 770/10. The said revision was allowed on 04/02/2014 and vide mutation entry No. 3929/5, 7/12 extract of suit property in counter claim has been canceled. The said order was given effect in the revenue records and at present there is no 7/12 extracts of suit property in counter claim. They have further stated that they are in possession of the suit property in the plaint, they have measured the said property and they have converted the same for non agricultural use so also they got sanctioned the maps for construction over the said property and have started construction over the same. In this backdrop, they have prayed for dismissal of the counter claim.

16] Considering the submissions of the plaintiffs and defendants, issues were framed by my learned predecessor below Exh.31. The said issues alongwith my findings thereon are as under –

<u>Sr. No.</u>	<u>Issues</u>	<u>Findings</u>
1	Do the plaintiffs prove that suit property bearing S. No. 151/16 is owned and possessed by them ?	Yes.
2	Does defendant No. 1 prove that he is in possession of and S. No. 151/14+15 (D) and it is different from suit property ?	No.
3	Whether plaintiffs are entitled to the relief of declaration against defendants as prayed for ?	Yes.

4	Whether plaintiffs prove the alleged obstruction and threat of dispossession at the hands of defendants ?	Yes.
5	Whether plaintiffs are entitled for the relief of perpetual injunction against defendants as prayed for ?	Yes.
6	Is defendant No. 1 entitled for compensatory cost if any ?	No.
7	Does defendant No. 2 prove that property purchased by him bearing S. No. 151, Hissa No. 14/15D, admn. 12-R is the property shown within four boundaries in plaint para No. 1 ?	No.
8	Does defendant No. 2 prove his possession over property purchased by him ?	No.
9	Is defendant No. 2 entitled for reliefs claimed ?	No.
10	What order and decree ?	As per final order.

:REASONS:

17] Plaintiffs have led oral evidence and have placed certain documents in support of their contentions and had closed their side vide pursis Exh. 97. In rebuttal the defendants have not led any evidence.

Evidence :-

Oral Evidence of the plaintiffs -

Witness No.	Name of the witness	Status	Exh. No.
1.	Shri. Pandhrinath Vishwanath Hole (PW.1)	Plaintiff No. 1.	75.

Documents relied upon by the plaintiffs -

<i>Sr. No.</i>	<i>Documents</i>	<i>Exh. No.</i>
1	Certified copy of 7/12 extract of suit property in plaint.	79
2	Certified copies of mutation entry Nos. 2594, 6068 and 3005.	80 to 82

3	<i>Certified copy of 7/12 extract of suit property in counter claim.</i>	83
4	<i>Map of Subdivision of Survey No. 151 in the year 1934 and 1964.</i>	84 and 85
5	<i>Copy of statement of plaintiff and defendant No. 2 obtained under Right to Information Act.</i>	86
6	<i>Certified copy of judgment of Deputy Collector.</i>	87
7	<i>Certified copy of report of spot inspection by Gaon kamgar Talathi and Mandal Officer.</i>	88
8	<i>Certified copy of judgment in Revision application No. 770/2010.</i>	89
9	<i>Copy of Mutation entry No. 44882</i>	90
10	<i>Certified copy of 7/12 extract of Survey N. 151/14+15D which was cancelled.</i>	91
11	<i>Certified copy of mutation entry No. 40251 about cancellation of 7/12 extract.</i>	92
12	<i>N.A. permission of Survey No. 151, Hissa No. 16</i>	93
13	<i>Commencement certificate.</i>	94
14	<i>Completion certificate.</i>	95
15	<i>Original property tax receipts of the suit property in name of plaintiff.</i>	96 to 96/11

18] Heard learned Advocate Shri. Shri. V. V. Mahadik for the plaintiffs. Defendants failed to argue the matter inspite of opportunity. Perused written notes of argument filed below Exh. 103. The major points of arguments of plaintiff would be considered in necessary details in the course of discussion.

AS TO ISSUE NOS. 1, 2, 7 AND 8 :-

19] All these issues are inter-connected with each other and hence to avoid repetition and for the sake of convenience they are taken up together for discussion.

20] In the case in hand it is not disputed that plaintiffs are

owner of S. No. 151/16 and defendant No. 1 was claiming ownership over S. No. 151/14+15D. It is also not disputed that both these properties are different. However, there is dispute about location of both the aforesaid survey numbers. Both the parties are coming up with the case that there properties are situated within the same four boundaries. It is not disputed that defendant No. 1 has sold the property to defendant No. 2. Both plaintiffs and defendant No. 2 are coming up with the case that they are on possession of the suit property.

21] To resolve dispute between the parties it is necessary to ascertain the location of Survey No. 151/16 and Survey No. 151/14 +15D. If both properties are not same then there no question of they being situated within the same four boundaries. Either of the aforesaid properties must be situated in the four boundaries specified in the plaint and counter claim.

22] In order to prove that suit property in the plaint is situated within the aforesaid four boundaries, plaintiffs have examined Pandharinath (PW.1). This witness has categorically deposed that suit property in the plaint is situated within the four boundaries specified in the plaint. He has further deposed that initially i.e. prior to 1964 there was 7/12 extract of Survey No. 151/14 +15D however after subdivision of Survey No. 151 in the year 1964 the said 7/12 extract was canceled. After subdivision in the year 1964, vide mutation entry No. 6068, name of plaintiffs was mutated as owner of Survey No. 151/16 and there was no such mutation in the name of defendant No. 1. Thus, there was no 7/12 extract in the name of defendant of Survey No. 151/14 + 15D after subdivision of Survey No. 151 in year 1964.

23] Subsequently, the defendant No. 1 has preferred RTS Appeal No. 48/10 before Deputy Collector. Vide decision in the said appeal mutation entry No. 6068 i.e. entry vide which name of the plaintiffs were mutated as owners of suit property in the plaint was canceled. Plaintiffs have challenged said order in RTS Revision Application No. 770/10 before Deputy Commissioner. The said revision application was allowed and the decision of Deputy Collector in RTS Appeal No. 48/10 was set aside. Thus, vide order in RTS Revision Application, the 7/12 extract of Survey No. 151/14+15D was canceled and at present there is no mutation entry or 7/12 extract of Survey No. 151/14+15D in name of defendant Nos. 1 or 2. The aforesaid entire evidence of the plaintiff has remained unchallenged. Defendants inspite of opportunity have not cross-examined the Pandhrinath (PW.1).

24] Further, to corroborate their evidence, the plaintiffs have placed reliance upon 7/12 extracts of Survey No. 151/16 upto year 2016 vide Exh. 79, 7/12 extracts of S. No. 151/14 +15D upto year 1964 vide Exh. 83, certified copy of order in RTS Appeal No. 48/10 vide Exh. 87, certified copy of order in RTS Revision Application No. 770/10 vide Exh. 89, mutation entry No. 44882 about cancellation of 7/12 extract of Survey No. 151/14+15D vide Exh. 90, certified copy of order passed to cancel mutation entry No. 40251 by which new 7/12 extract of Survey No. 151/ 14 + 15D was prepared in the name of defendant No. 1 vide Exh. 92, certified copy of canceled 7/12 extract of S. No. 151/14+ 15D vide Exh. 91. All these documents corroborate version of Pandhrinath (PW.1) that at present the plaintiffs are owners of Survey No. 151/16 and the mutation entries about their

ownership and 7/12 extracts about their possession are in existence. These documents also falsify contention of the defendants that defendant No. 1 was owner of 151/14+ 15D and the mutation entry and 7/12 extracts of the said property are in his name. The defendants inspite of opportunity did not produce any document on record to show their ownership over Survey No. 151/14 + 15D.

25] Further, to prove the boundaries of Survey No. 151/16, the plaintiffs are produced on record map of Subdivision of Survey No. 151 in the year 1934 vide Exh. 84 and map of Subdivision of Survey No. 151/16 in the year 1964 vide Exh. 85. Both these maps support the contention of the plaintiff that Survey No. 151/16 is situated within the four boundaries specified in the plaint. The plaintiff has also produced on record copies of measurement of Survey No. 151/16 however they have not taken efforts to prove these documents. From the maps Exh. 84 and 85 it is seen that Survey No. 151/16 is situated within the four boundaries in the plaint.

26] In order to prove their possession over the suit property in the plaint, the plaintiffs have produced on record 7/12 extracts of Survey No. 151/16 upto year 2016 vide Exh. 79, the spot inspection report issued by Gaon Kamgar Talathi and Mandal Adhikari vide Exh. 88, N.A. permission of Survey No. 151/16 issued by Collector, Pune vide Exh. 93, commencement certificate of construction over Survey No. 151/16 vide Exh. 94, completion certificate of the said construction vide Exh. 95 and property tax receipts of Survey No. 151/16 in name of plaintiffs and their family members vide Exh. 96 to 96/11. The defendants inspite of opportunity did not cross-examine the Pandharinath (PW.1) nor any efforts are made by them to disprove

the aforesaid documents.

27] From all the aforesaid discussion, so also, by considering the evidence of Pandhrinath (PW.1) and from the documents filed by the plaintiffs on record, I have come to the conclusion that the plaintiffs have succeeded to prove that they are owners of Survey No. 151/16 and they are in possession of the same. On the other hand, defendants have failed to prove that suit property in the counter claim is situated within the four boundaries mentioned in the counter claim and they are in possession of the said property. Accordingly, I answer issue No. 1 in affirmative and issue No. 2, 7 and 8 in negative.

AS TO ISSUE NO. 4 :-

28] It is the contention of the plaintiffs that taking disadvantage of the wrong 7/12 extracts of Survey No. 151/14+15D in his name, defendant No. 1 has attempted to dispossess the plaintiff illegally on 05/09/2010. Plaintiffs resisted the defendant however they are apprehending that defendant may again repeat the said conduct. Further, taking disadvantage of the said entry defendant No.1 has sold out suit property in the counter claim to defendant No. 2 and now defendant No.2 is attempting to dispossess the plaintiffs.

29] To prove the said contention plaintiffs have examined Pandhrinath (PW.1) he has categorically stated about aforesaid conduct of the defendants in his evidence affidavit. The defendants inspite of opportunity did not cross-examine the Pandhrinath (PW.1). Thus, his evidence has remained unchallenged. As discussed above it has come on record that the defendants are coming up with the contention that they are in possession of suit property in the counter claim and it is situated within the same boundaries in which suit

property in the plaint is situated. The said defense put up by the defendant itself suggests that they are claiming possession over the suit property in the plaint. I have already come to the conclusion that plaintiffs have proved their ownership as well as possession over the suit property in the plaint. The version of Pandhrinath (PW.1) that there is threat of plaintiffs being dispossessed by the defendants cannot be said to be unreasonable in light of the defense put up by the defendants. In these circumstances, protection needs to be afforded to the plaintiffs. Accordingly, I answer issue No. 4 in affirmative.

AS TO ISSUE NOS. 3, 5, 6, 9 AND 10 :-

30] In light of all the aforesaid discussion, I have come to the conclusion that plaintiffs have succeeded to prove that they are owners and in possession of Survey No. 151/16 i.e. suit property in the plaint. On the other hand, defendants have failed to prove their ownership over Survey No. 151/14+15D i.e. suit property in the counter claim. They have also failed to prove that they are in possession of the said property and the said property is situated within the four boundaries in the plaint. In the said circumstances, plaintiffs would be entitled to the relief of declaration that they are the owners of Survey No. 151/16 which is situated within the four boundaries mentioned in the plaint and they are in possession of said property. As the plaintiffs have succeeded to prove that there is threat of they being dispossessed from the suit property in the plaint they are also entitled for the relief of permanent injunction. On the other hand, defendants are not entitled for any relief. Accordingly I answer issue Nos. 3 and 5 in affirmative and issue Nos. 6 and 9 in negative. In answer of issue No. 10, I proceed to pass following order :-

:: ORDER ::

- 1] Suit is decreed with costs and counter claim is dismissed with costs.
- 2] It is hereby declared that plaintiffs are owners of Survey No. 151/16 situated within the four boundaries in the plaint and they are in possession of the same.
- 3] The defendants are permanently restrained from dispossessing the plaintiffs or interfering with their possession over Survey No. 151/16.
- 4] Decree be drawn up accordingly.

[Dictated and pronounced in open Court]

Date : 06.05.2022.

(M.S.Sahasrabudhe)
Addl. Judge, Small Cause Court
& Jt. Civil Judge Senior Division Pune.