

Order below Exhibit 5 in Regular Civil Suit No.1/2018

1- The present application is made by plaintiff for grant of temporary injunction under Order XXXIX, Rule-1 of Civil Procedure Code.

2- Perused application. Heard Mr.K.P. Mudpe, learned Advocate for plaintiff and Mr.S.B. Jadhav, learned Advocate for defendant.

3- It is a contention of plaintiff that, parties are relatives of each other. They are having adjacent land. There was ancestral property. Previously, it was belonged to his grandfather namely Janardhan Narsingh Dhopte admeasuring 83 R in block No.186 at Pohandul. However, he made partition in the same and it was allotted to him by way of mutation entry No.1299 on 15.08.2007. Since, he is in possession over the same. However, defendant has no concern with it. However, defendant is interfering into his peaceful possession over the same. At once, he forcibly cut trees in it and therefore he had filed complaint before Forest Officer at Parbhani. Presently, there is a crop of Toor in the said land. However, defendant has obstructed him for its harvest. However, plaintiff has also beat him on 31.12.2017 and

therefore, he lodged report against him. However, several times he requested defendant not to obstruct into his peaceful possession, but, it was in vain. Defendant is continued obstruction in his peaceful possession. Therefore, he is constrained to institute present suit and prayed for grant of temporary injunction restraining defendant not to interfere into his peaceful possession over suit property.

4- On the other hand, defendant appeared and filed his say below Exhibit 17 and contested application. It is contention of defendant that, he is owner of land in block No.186 admeasuring 1 H 65 R. It is ancestral property of defendant. Plaintiff has no concern with it. Since 1953 it was owned by one Arjun Narayan Dhopte, who is his great grandfather. However, since 1966 to 1972 and 1982 to 2008 it was owned and possessed by his grandfather Bhanudas Arjun. He is died prior to one year. However, in the year 2008 Government of Maharashtra has issued Government resolution that there should not be a name of possessor except owner of the land in 7/12 extract. However, defendant is in possession over the same. Due to the said Government resolution, his name is not appearing in 7/12 extract since 2008.

5- He has denied contention of plaintiff that, on the basis of partition, plaintiff became owner and possessor of the same and accordingly, sanctioned mutation entry No.1299 in his favour. However, he got sanctioned said mutation entry in collusion with Revenue Officers. However, grandfather of plaintiff has sanctioned illegal mutation entry in favour of plaintiff.. However, he did not entitle for partition of suit property, as the judgment of Sub-Judge Court, District Parbhani was not in his favour. He did not file the copy of said decree. As such, there is no substance that, plaintiff is in possession of suit property. Hence, prayed that application may kindly be rejected.

6- The points for determination along with findings thereon for the reasons stated are as under:

Points	Findings
1. Whether prima-facie case lies in favour of the plaintiff ?	 In <u>affirmative</u> .
2. Whether plaintiff proves that balance of convenience tilts in his favour?	... <u>In affirmative</u> .
3. Whether plaintiff further proves that if the injunction is refused, he will suffer an irreparable loss ?	... <u>In affirmative</u> .
4. What order ?	.. Application is allowed.

REASONS

7- Plaintiff filed following documents in support of his contention :-

- A- Copy of complaint to P.I., Police-station, Manwat dt.31.12.2017,
- B- Copy of applicant to Forest Officer, Parbhani,
- C- Copy of panchnama prepared by Forest Officer, Charthana,
- D- Copy of statement recorded by Forest Officer, Charthana,
- E- Copy of mutation entry No.1298,
- F- Copy of 7/12 extract of block No.186,
- G- Copy of complaint to P.I., Police-station, Manwat dt.11.01.2018,
- H- Copy of Namuna No.8-A of block No.186,
- I- Photographs,
- J- Copy of search report,
- K- Pera certificate,
- L- Affidavits of Gopal Dhopte, Mangesh Dhopte & Dnyanoba Dhopte.

8- Defendant also filed following documents in support of his contention :-

- A- Copy of 7/12 extract for year 1958 to 2013 of block No.186,
- B- Copy of 9/3 – 9/4 extract of block No.186,

- C- Copy of mutation entry No.186,
- D- Copy of Khasra Pahani Patrak,
- E- Affidavits of Anil, Ramrao & Ramkishan,

Points No.1 to 3 :-

9- In order to get temporary injunction, there are three basic golden principles issued in **Stanley's Morghan Case** that, there must be a prima-facie case in favour of the party. Prima-facie case does not mean prima-facie success. It means, there must be an issue to be determined at the trial. However, party would show that, balance of convenience would also lies in his favour, as well as, if temporary injunction is refused, it will suffer an irreparable loss.

10- In this respect, it is contention of plaintiff that, he has strong prima-facie case i.e. suit property is owned by him on the basis of mutation entry No.1299 sanctioned in his favour on 15.08.2007. The copy of the same is filed herewith. He has further submitted that, suit property is ancestral property. It was previously owned by his grandfather Janardhan Narsingh Dhopte. However, he has made partition in the same and transferred same in his favour. Since, 2007 he is in peaceful possession over the same.

11- On the other hand, it is a contention of defendant that, since 1953 one Arjun Narsingh Dhopte, great grandfather of defendant, was in possession of the same. Thereafter, since 1966 to 2008, it was possessed by his grandfather Bhanudas Arjun Dhopte. He has also filed copies of 7/12 extract in support of his contention. However, it is further contention of defendant that, mutation entry sanctioned in favour of plaintiff is illegal. Plaintiff has a brother, however, his name is not appearing in the same. It shows that, he has sanctioned the same in collusion with Revenue Officer. However, after death of plaintiff's father, his grandfather Janardhan Narsingh Dhopte sanctioned mutation entry No.186 in his favour. However, judgment of Sub-Judge Court, District Parbhani was not in his favour. The decree was drawn in Urdu language. On the basis of same, he got sanctioned illegal mutation in his favour. However, plaintiff did not file copy of decree on the basis of which he has become owner. The defendant has also filed the copy of said mutation entry. On perusal of said mutation entry it seems that, same was sanctioned on the basis of compromise took place between the parties. On the basis of compromise and as per application of Janardhan Narsingh Dhopte, mutation entry No.186 was sanctioned in his favour in the year 1972. However, there is no case of plaintiff that, he become owner on the basis of said mutation entry No.185.

12- On the other hand, as per contention of defendant that, judgment passed by Sub-Judge Court, District Parbhani was not delivered in

favour of Janardhan Narsingh and decree was also drawn in Urdu language. On the basis of the same, Janardhan Narsingh Dhopte got sanctioned illegal mutation entry in his favour. Therefore, in order to show contrary, the defendant should have filed copies of the same. However, it is pertinent to note that, said mutation entry is sanctioned in the year 1972. But, the same is not challenged by defendant or anybody on his behalf since then. It is further contention of defendant that, on the basis of said illegal mutation entry No.1299 in his favour is wrong. However, plaintiff has brother. His name do not appear in the same. It shows that, it is sanctioned in collusion with Revenue Officers. However, it is to be noted that, same mutation entry is sanctioned in favour of plaintiff on 15.08.2007. But, same is not challenged till by defendant or his ancestor.

13- However, there is famous maxim that, "*Law helps those who are vigilant or not those who are sleep over their right*". As such, in view of said maxim, if defendant was aggrieved he would have challenged the same. Only denial in respect of the same, does not help him. Moreover, both the parties have filed affidavits of adjacent land owners in their favour. However, documents filed on record shows that plaintiff is in possession over suit property since 2007-2008. His name is also appears in copies of 7/12 extract in the column of ownership. Moreover, ownership follows possession. Therefore, prima-facie, it can be said that, plaintiff is in possession over the suit property and as the defendant is claiming his ownership over suit

property, without there being any right. Therefore, it is necessary to restrain him from interfering or obstructing into peaceful possession of plaintiff over suit property.

14- Moreover, in support of contention, plaintiff has filed some photographs on record in order to show that, there is a crop of Toor which is on the verge of harvesting and defendant is obstructing him. Therefore, balance of convenience also lies in his favour. In such a case, if temporary injunction is not granted in favour of plaintiff, he would certainly suffer an irreparable loss that will not be calculated in terms of money. Because, being owner, it is desire of human being to get fruits of the same. In such circumstances, it will be desirable to grant temporary injunction in favour of plaintiff restraining defendant not to obstruct and interfere into peaceful possessed of plaintiff over suit property till further order. Accordingly, answered points No.1 to 3 in affirmative.

Point No.4:-

15- At this stage, it cannot be said that, which party is at fault. Therefore, parties are directed to bear their respective costs. As such, in answer to point No.4, pass following order.

Order

1- Application is allowed.

- 2- The defendant, his agents or servants or anybody on his behalf are hereby temporarily restrained not to interfere into peaceful possession of plaintiff over land in block No.186 to the extent of 83 R situated at Pohandul , till disposal of the suit.
- 3- Parties are directed to bear their respective costs.

Date: 24.01.2018

(J .G. Wagh)
Civil Judge, J.D,
Manwat.