

**IN THE COURT OF
JOINT CIVIL JUDGE JUNIOR DIVISION,
KALYAN**

MHTH080000702020

R.C.S./53/2020

Sunita Pandurang Patil
Vs.
Satish Ramchandra Patil

ORDER AT EXH. 05

This is an application for temporary injunction under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure (the C.P.C. for short). Agricultural lands bearing gut No. 71, 108, 116-B, 116-A, 164, 176, 5, 91, 104, 105, 21, 99, 236, 90, 229, 168 situated at Mouje Pacharde Tal. Bhudargad, Dist. Kolhapur and residential premises Flat No. 305, 3rd floor, 'D' wing, Vishal Nagari CHS Ltd., Amrai Kalyan(East) Dist. Thane are subject matter of the the suit. Hence, they will be collectively referred as 'suit properties'.

The case of the plaintiff, in brief, is as under:

02. Defendant Nos. 1, 2 and 3 are the brothers of the plaintiff whereas defendant No. 4 is her father. The suit properties are joint family properties of the plaintiff and defendant Nos. 01 to 04. Defendant No. 4 had purchased agricultural land bearing Gut No. 168 admeasuring 0.67.60 hector R. Sq. mt. in the name of defendant No. 1. He had also purchased suit flat in 2012 in the name of defendant No. 2. It was transferred in the name of wife of the defendant No. 2

alongwith defendant No. 1 and 3. After few days defendant No. 1 transferred said flat in his own name. In 2016, defendant No. 1 and 2 prepared false and bogus partition deed and took signatures of defendant Nos. 3 and 4 alongwith the plaintiff under undue influence and impression that all of them are having equal share in the suit properties. She came to know that both of them have played fraud upon her. Time and again she requested defendant Nos. 01 to 04 to cancel said partition deed but in vain. She also approached revenue and police authorities but of no avail. Defendant No. 5 had issued notice to the plaintiff to submit an objection pursuant to request of defendant Nos. 1 and 2 for mutation entry in Revenue record. She took strong objection. Time and again defendant Nos. 1 to 4 have denied her share in the suit properties. In this way, she has prima facie case. Balance of convenience also lies in her favour. Thus she is likely to suffer irreparable loss if injunction is not granted in her favour. Hence, she prayed to allow the application. Application is supported by affidavit and LOD at Exh. 17.

03. As against this, defendant Nos. 1, 2 and 4 filed their WS and say at Exh 14. They denied all the adverse averments made by the plaintiff against them. However, they have admitted their relationship. They further submitted that defendant No. 4 is owner and possessor of suit properties situated at Mouje Pacharde. Whereas, the suit flat is self acquired property of defendant No. 2. Partition deed No. 849/2016 dt. 26/05/2016 was executed between the parties and same was duly registered by obtaining free consent of the plaintiff. They have never deceived the plaintiff. She had filed several complaints

against them to harass and extort money. She has no right in agricultural land bearing Gut No. 168 as it is self acquired property of defendant No. 1. Moreover, defendant No. 4 has given Rs. 20,00,000/- for purchasing flat at Kalyan. Defendant No. 2 has purchased the suit flat on 14/02/2019 by obtaining home loan. Said flat was purchased by defendant Nos. 1, 3 and wife of the defendant No. 2 on 29/10/2014. It was thereafter released by defendant No. 3 and wife of defendant No. 2 by way of released deed on 12/03/2018. Therefore, said flat is standing in name of defendant No. 1. The plaintiff has no right whatsoever in the suit flat. The partition Deed is valid and binding on the parties and therefore it cannot be cancelled. They have duly replied to all notices sent by the plaintiff. The plaintiff has failed to make out prima facie case. She has not proved that balance of convenience lies in her favour. If injunction is rejected she is not likely to suffer irreparable loss. Hence, they prayed to reject the application.

04. Defendant No. 3 filed affidavit in reply at Exh. 21 and offered no objection to allow application of the plaintiff.

05. Defendant No. 5 denied all the adverse allegations made against him. According to him partition deed is valid unless it is cancelled by competent Court. Said deed is valid. Therefore, he has complied provisions of sections 149 and 150 of Maharashtra Land Revenue Code 1966 and entered mutation entry No. 711 on 03/01/2020. But, the plaintiff filed RTS complaint / SR/ 01/2020 dt. 19/10/2020. However, same was dismissed. Being agrieved by order of Circle Officer, she filed RTS/Appeal 19/2021 dt. 07/09/2022 in

which order passed by Circle Officer was confirmed. Therefore, in view above chronology, entry of said partition deed was taken on record. Hence, there is no crux in the suit of the plaintiff.

06. Perused written notes of argument filed at Exh.22 and 24 and documents filed on record at Exh. 17. Following points arose for the determination of application at Exhibit 5 and findings thereon are recorded for the reasons stated below.

Sr. No.	Points	Findings.
1.	Whether the plaintiff has prima facie case in his favour?	In the negative.
2.	Whether the balance of convenience lies in favour of the plaintiff?	In the negative.
3.	Whether the plaintiff prove that he will suffer irreparable loss if the injunction is not granted in his favour?	In the negative.
4.	What Order?	As per final order.

: REASONS:

AS TO POINT NOS. 01 to 03 :-

07. Point Nos. 01 to 03 are interlinked. Hence they are discussed together.

08. An injunction is a judicial process whereby a party is required to do or to refrain from doing any particular act. It is a remedy in the form of an order of the Court, addressed to a particular

person that either prohibits him from doing or continuing to do a particular act or orders him to carry out a certain act. The primary purpose of granting interim relief is the preservation of property in dispute till legal rights and conflicting claims of the parties before the Court are adjudicated. In order to earn order of injunction, a plaintiff has to pass triple test. He should establish that he has a prima facie case. He should also prove that balance of convenience tilts in his favour and if injunction is not granted in his favour, he would suffer irreparable loss.

09. The ambit and scope of the connotation ‘prima facie case’ is given in ***Martin Burn Limited Vs. R.N. Banerjee*** by the Hon’ble Supreme Court as follows:

A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.

10. The Court must be satisfied that there is a *bona fide* dispute raised by the plaintiff that there is an arguable case for trial which needs investigation and a decision on merits and on the facts before the Court there is a probability of the plaintiff being entitled to the relief claim by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of temporary

injunction.

11. According to the plaintiff, the suit properties are ancestral joint family properties of her and defendant Nos. 01 to 04. She has share in the suit properties. Therefore she is owner and possessor of the suit properties. Defendant Nos. 1 and 2 prepared false and bogus partition deed bearing No. 849/2016 dt. 26/05/2016 by playing fraud upon her. Whereas defendant No. 1, 2 and 4 denied allegations made against them. According to them they have executed said partition deed with free consent of the plaintiff. Defendant No. 5 also denied all adverse allegations against him. Whereas defendant No. 3 has offered no objection as far as claim of the plaintiff concerned. The main bone of contention between the parties is registration of partition deed No. 849/2016 dt. 26/05/2016. Therefore, it is just and necessary to look into recitals of said partition deed. It is filed at Sr. No. 1 below document list Exh. 17. Said partition deed is executed between Ramchandra Balu Patil, Satish Ramchandra Patil, Sagar Ramchandra Patil, Rahul Ramchandra Patil and the plaintiff. Said document prima facie shows that it is executed in respect of suit properties i.e. agricultural land situated at Mouje Pacharde. It also shows that the plaintiff and defendant Nos. 1 to 4 have put their signatures on the document. It is also attested by two witnesses. As per 5th para of the partition deed property bearing gut no. 176 is allotted to the plaintiff. The plaintiff has failed to rebut this partition document. She has put across only oral allegations against defendant Nos. 01 to 04. Therefore in the absence of any subsequent documentary evidence said deed cannot be challenged and doubted as such. As on today there is

presumptive value attached to the partition deed No. 849/2016. Per contra, defendant Nos. 1, 2 and 4 relied on proceedings took place before Revenue authorities. Those documents are placed below documents list Exh. 29. The document at Sr. No. 1 of LOD Exh. 29 prima facie shows that the plaintiff had raised her grievance by filing RTS/SR/1/2020 wherein her complaint was not allowed and mutation entry No. 711 dt. 03/01/2020 was certified according to partition deed in respect of Gut No. 176 admeasuring 32 R. Document No. 2 suggests that the plaintiff had filed RTS/Appeal/19/2021 against order of Circle Officer dt. 19/10/2020. Said order was also confirmed. From above documents it can be certainly concluded that said partition deed was acted upon. Therefore, considering above documents & discussion, I conclude that bare oral contentions of the plaintiff are not sufficient to establish that she has undivided share in the suit properties i.e. agricultural land situated at Mouje Pacharde.

12. Furthermore, the plaintiff also claims that she is also owner and possessor of the suit flat situated at Kalyan. To support her contention she filed agreement for sale of flat bearing No. 7186/2014. However, said document does not stand by her contention. On bare perusal of recitals of said agreement, it is seen that the transaction took place between defendant No. 2 and defendant No. 1, 3 and wife of defendant No. 2 only. The name of the plaintiff is not seen there. Therefore, it would be absurdity to conclude that the plaintiff is owner and possessor of the suit flat. In view of above discussion, I am not convinced that plaintiff has established the prima facie case. Therefore, I answer point No. 1 in the negative.

13. The plaintiff must further satisfy the Court about the second and third condition by showing that balance of convenience lies in her favour and she will suffer irreparable loss if the injunction as prayed is not granted and that there is no other remedy open to her by which she can protect himself from the consequences of apprehended injury. In other words, the Court must be satisfied that refusal to grant injunction would result in irreparable injury to the party seeking relief and he needs to be protected from the consequences of apprehended injury.

14. In case at hand, the plaintiff has failed to establish the prima facie case. Therefore, I conclude that balance of convenience does not lie in her favour and therefore, she is not likely to suffer any irreparable loss. Hence, I answer point Nos. 2 and 3 in the negative too. Therefore, to answer point No. 4, I proceed to pass the following order.

:: O R D E R ::

Application at Exhibit 5 is rejected with costs.

Date : 11/07/2024
Kalyan

(P. B. Taur)
Jt. Civil Judge J.D. Kalyan