



Order below Exh.5 in Reg. Civil Suit No.112/2018
(C.N.R. No. MHAH05-000371-2018)

This is plaintiffs suit for partition, separate possession, declaration and perpetual injunction in respect of suit property bearing Gut no. 68, adm. 2 Hs. 3 Ares, Gut no. 118, adm. 51 Ares, Gut no. 119, adm. 40 Ares, Gut no. 134, adm. 5 H. 51 Ares, Gut no. 134/2, adm. 1 H. 40 Ares, Gut no. 183, adm. 1 H. 57 Ares, Gut no. 199, adm. 1 H., Gut no. 256, adm. 93 Ares, Gut no. 257, adm. 93 Ares, Gut no. 295, adm. 1 Are, all situated at Mauje Matulthan, Tal. Shrirampur, Dist. Ahmednagar. (All properties shall be hereinafter referred as 'Suit Properties' for brevity).

2. Plaintiffs aver that suit properties are joint Hindu family properties of plaintiffs and defendants devolved upon them from their ancestor Murlidhar Bhikaji Kanse. Murlidhar had two wives, namely Gangubai and Bhagirathibai. Gangubai was his first wife, who had four children namely Badrinarayan, Kacharu, Sushma and Dattatraya. Plaintiff Nitin and Chandrashekhar are sons of deceased Badrinarayan. Bhagirathibai was Murlidhar's second wife having two children namely Balkrishna and Chandrakala. Balkrishna had two wives namely Mangal and Rukhmini. Balkrishna is dead. His wife Mangal has one son Gulab from Balkrishna. His second wife Rukhmini has children namely Manisha, Sachin and Sonali from Balkrishna.

3. After ancestor Murlidhar's demise, suit properties were devolved in the name of plaintiffs and defendants. The

properties which were devolved in the name of deceased Badrinarayan have devolved on his plaintiff sons and the properties devolved in the name of deceased Balkrishna have devolved on his children namely Mangal, Rukhmini, Gulab, Manisha, Sachin and Sonali. Suit properties are standing in the name of plaintiffs and defendants and till date, there is no partition between them by metes and bounds.

4. Plaintiffs allege that behind their back, defendants in collusion have shown one partition of suit properties wherein plaintiffs were not the parties and therefore, said partition is not binding on plaintiffs. After this bogus partition, which has been effectuated in revenue records vide Mutation Entry(hereinafter referred as M. E. no. for brevity) no. 2912, land adm. 1 H. 40 Ares, from Gut no. 134, has been sold by defendant Dattatraya to defendant Sushma, which is an ineffective document, having no binding force on plaintiffs shared interest in the suit property. As per plaintiffs, defendant Sushma is not in possession of the suit property. Plaintiffs submit that land adm. 1 Are from Gut no. 295, is the joint family property purchased from the joint family income. Irrespective of the fact of the sale transaction and that the properties being purchased by the defendants in their name by utilizing the consideration money, suit properties are joint family properties of plaintiffs and defendants.

5. After demise of Murlidhar, vide M. E. no. 2569, suit properties have been entered in the names of plaintiffs and defendants. On demise of Badrinarayan, the properties

standing in his name have entered in the name of his legal heir plaintiffs vide M. E. no. 3382, whereas, vide M. E. no. 4342, properties devolved on deceased Balkrishna are entered in the names of his legal heirs.

6. Plaintiffs allege that despite of suit properties being their ancestral properties, wherein till date there has been no partition between plaintiffs and defendants, since last 1 year, defendants have abstained to give any yield from the suit properties to plaintiffs. Plaintiffs assert that they are having 1/5th undivided share in suit properties and they have asked for their share to defendants on 01.02.2018. But, defendants have refused to give plaintiffs share in suit properties and have further refused to give the accounts of earning therefrom and have threatened plaintiffs that, they would create third party interest in suit properties. If defendants succeed to create third party interest in suit properties, plaintiffs would suffer irreparable loss and therefore, having apprehension, plaintiffs are compelled to move this Court with suit for partition, separate possession, declaration and perpetual injunction wherein, they have moved this interim application against defendants restraining them from creating third party interest over suit properties. Plaintiffs prays for their application to be allowed.

7. Deft nos. 1, 11 and 12, vide their say(Exh.53) have denied plaintiffs allegations and have submitted that plaintiffs have suppressed material facts while filing the suit. They submit that plaintiffs have not properly described the suit

properties. As per defendants, plaintiffs suit is not tenable for *non-joinder* of necessary parties. They submit that present suit is not legally and factually tenable.

8. Defendants have specifically denied plaintiffs ancestral interest in suit properties by submitting that they are been ousted from their joint family. As per defendants, plaintiffs are not entitled for the claimed partition of suit properties. Defendants submit that some of the suit properties and more specifically Gut no. 68, adm. 2 H. 3 Ares, have been sold for repayment of joint family loan with Union Bank and Bhuvikas Bank and other Societies and further towards purchase of one Flat at Andheri, Mumbai, which is their joint family property. Defendants submit that plaintiffs have not inserted this property in the suit. So also, plaintiffs have failed to insert joint family property bearing Gut no. 121, adm. 11 Ares and Gut no. 203, adm. 21 Ares, in the suit. On count of non insertion of these properties in the suit, defendants assert that plaintiffs suit is not maintainable.

9. As per defendants, deft no. 13 Suman is in possession of suit property bearing Gut no. 134 on the basis of registered sale-deed, which has been effectuated in her favor, by their ancestor Murlidhar for repayment of joint family loan, with Bhuvikas Bank. Defendants further submit that plaintiffs through one Dattatraya have sold land adm. 1 H. 40 Ares from Gut no. 134/2, from consideration amount of Rs.1,97,000/- to deft no. 2 and said consideration amount was used by them for purchasing Flat at Andheri, in the name of Badrinarayan. Said

Flat is the joint family property of their family.

10. Defendants submit that plaintiffs father and deft no. 3 Dattatraya, towards family need, have sold land adm. 1 H. 57 Ares from Gut no. 186 on dtd. 04.05.1990 and used the consideration amount for purchasing Gut no. 199, adm. 1 H. on the same day in the name of plff no. 1 Chandrashekhar and Dattatraya's wife Kusumbai. Later on, Kusumbai have transferred 50 Ares portion of land from Gut no. 183, in the name of deft no. 11 Santosh. As plaintiffs are not in possession of above Gut nos. 183 and 199, since last 18 to 20 years, they have no interest therein, nor do other defendants have there interest therein.

11. As per defendants, property bearing Gut no. 256, adm. 93 Ares and 257, adm. 93 Ares, had devolved on plaintiffs father Badrinarayan and mother of deft nos. 1 to 3 namely Gangubai, wherein deft nos. 4 to 10 have no right to claim partition. Defendants have repeatedly asserted that the plaintiffs are ousted from the joint family, due to which, they have no ancestral interest in suit properties. They further submit that plaintiffs have renounced Hindu Religion and that its the defendants who have looked after plaintiffs father Badrinarayan for three years after he suffered paralysis. By denying plaintiffs averred allegations, defendants pray for rejection of the application.

12. Deft no. 3 in his written statement(Exh. 77) has re-uttered most of the contentions made by deft nos. 1, 11 and 12

in their written statement(Exh. 53). Deft no. 3 submits that plaintiffs suit is not legally and factually tenable and liable to be dismissed and that present application be rejected.

13. Deft nos. 6, 8 and 9 in their written statement(Exh. 36) have denied all of the plaintiffs allegations and have submitted that plaintiffs suit and present application is liable to be dismissed and rejected respectively. Defendants submit that plaintiffs have not inserted land adm. 80 Ares, from Gut no. 121, situated at Mauje Matulthan in the suit. As per defendants, in Gut no. 199, there is one bungalow standing in the name of deft no. 11, which has been constructed by utilizing joint family income having G. P. no. 49. Said house property has not been inserted in the suit. Defendants submit that plaintiffs are intending to seek partial partition of the suit properties.

14. Defendants admit that suit properties are joint family properties and they allege that M. E. no. 3912 is illegal. By denying plaintiffs allegations, defendants pray for rejection of the application.

15. Deft nos. 4B to 4E vide pursis(Exh. 65) have adopted written statement(Exh. 36) of deft nos. 6, 8 and 9.

16. Deft no. 13, in her written statement(Exh. 37) have denied plaintiffs allegations and have submitted that their suit is not legally and factually tenable. She submits that previously, there was the partition of suit properties which has been effectuated vide M. E. no. 3912, which till date is not

challenged by plaintiffs, due to which plaintiffs are not entitled to move the Court for partition.

17. Deft no. 13 admits about the sale transaction dtd. 03.04.1978, standing in her favor in respect of land adm. 1 H. 41 Ares, from Gut no. 134. She submit that the sale transaction is more than 30 years old and was never challenged by plaintiffs. Deft no. 3 contends to be the wife of deft no. 1, who has driven her from their house. Deft no. 13 resides in her parental house at Padhegaon, Tal.Kopargaon. Towards reimbursement of loan taken from Bhuvikas Bank, said property was sold by Murlidhar Bhikaji Kanse and Kacharu Murlidhar Kanse, for consideration amount of Rs.2,000/- to deft no. 13's father. Said property is her independent and self acquired property, wherein plaintiffs and defendants have no concern as they have never challenged the sale-deed.

18. Deft no. 13 submits that plaintiffs are not entitled to claim any interest in said property by challenging deft no. 13's interest therein and she submits for rejection of the application by contending that present suit is not tenable.

19. Deft no. 15 in her written statement(Exh. 34), have raised legal and factual objections and have challenged the tenability of the suit. She submits that land adm. 1 H. 57 Ares, from Gut no. 183, has been purchased by her vide registered sale-deed and accordingly, her name has been inserted in revenue records vide M. E. no. 2891 and since 04.05.1990, said property is standing in her name being its owner. This fact is

within the knowledge of plaintiffs but, still they have challenged the transaction in the suit, which they never had previously. So also, plaintiffs have never challenged M. E. nos. 2891 and 3912, prior to filing of suit. In view of these contended facts, deft no. 15 submits for rejection of the application by contending that plaintiffs suit is not legally and factually tenable.

20. Despite of service of suit summons on deft no. 14, vide report(Exh. 12), she has failed to appear in the suit causing the Court to pass ex-parte order against her vide order below Exh.1, dtd. 17.11.2022.

21. Considering above rival pleadings of both plaintiffs and defendants, following points arise for my determination towards which in view of documents on record and arguments laid by their Learned Advocates, I have recorded my findings with reasons thereto.

No.	Points	Findings
1	Whether plaintiffs have <i>prima-facie</i> case ?	Affirmation
2	Whether balance of convenience lie in their favor ?	Affirmation
3	Whether plaintiffs would suffer irreparable loss if their application is rejected	Affirmation
4	What order ?	Application Allowed.

REASONS

22. With list(Exh. 3), plaintiffs have relied on 7x12 extracts of all suit properties, certified copies of M. E. nos. 3382, 4341, xerox copies of M. E. no. 2569, 429, 3912.

23. deft no. 13 with list(Exh. 50), have relied on xerox copy of sale-deed dtd. 03.04.1978 standing in her favor. Later deft no. 13 with list(Exh. 80A) have relied on registered sale-deed dtd. 13.10.2021, bearing Reg. no. 4095/2021, executed by her in favor one Padma Narayan Vighne, in respect of suit Gut no. 134, adm. 1 H. 41 Ares.

24. Apart from deft no. 13, no other defendants have relied on any documents in order to substantiate their defence.

25. In order to avoid repetition of facts and its discussion, in view of the relied documents and arguments laid by plaintiffs and defendants Lrnd. Advocates, all points for determination are collectively discussed.

As To All Point Nos. 1 to 4 :-

26. The relationship between plaintiffs and defendants is admitted. The transaction in favor of deft no. 13 and 15 is admitted by both plaintiffs and defendants, and is challenged by plaintiffs in the suit.

27. Its the main averment of plaintiffs that suit properties are the joint family properties of plaintiffs and defendants and till date, those are not partitioned between them by metes and bounds. Even, deft nos. 6, 8 and 9 submit

that suit properties are their joint family properties. On the contrary, contesting deft nos. 1, 11, 12 with 3, 13 and 15 have laid their version of contentions inferring that some of the properties were disposed of towards purchase of new suit properties and that for reimbursement of joint family loans taken from the Banks and further that there was a partition of suit properties which was effectuated in revenue records vide M. E. no. 3912.

28. Considering the pleading of the contesting parties, the issue which has to be adjudicated is regarding the nature of suit properties as to whether those are joint family properties or they are partitioned vide M. E. no. 3912, dtd. 03.03.2010, in view of its copy on record with list(Exh. 3).

29. Considering the initial stage of the suit, till the adjudication of this crux issue of the suit, the suit properties are required to be protected and prevented for changing the hands. Having the names of defendants on revenue records, which are on record with list (Exh. 3), in view of alleged partition dtd. 03.03.2010, vide M. E. no. 3912, the defendants could enter into transaction of the suit properties with intent to deprive plaintiffs of their interest in suit properties.

30. Deft nos. 1, 11 and 12 have contended that plaintiffs are ousted from the suit properties having no ancestral interest therein. In view of this contention, wherein defendants are straightaway denying plaintiffs ancestral interest in suit properties, the possibility of defendants entering

into the transaction of suit properties, creating third party interest therein, could not be ruled out.

31. Very recently, in view of sale-deed bearing Reg. no. 4095/2021, dtd. 13.10.2021, filed by deft no. 13 with list(Exh. 80A), it appears that she has sold suit property bearing Gut no. 134, to extent of land adm. 1 H. 41 Ares, to one Padma Narayan Vighne.

32. Irrespective of the fact that the plaintiffs have not taken any steps to seek remedy against this sale transaction, it appears that defendants would not bother to enter into sale transactions or other transactions in respect of suit properties, in order to deprive plaintiffs to their share in suit properties.

33. Considering these facts, in view of the initial stage of the suit, both plaintiffs and defendants are at liberty to lead their evidence towards unfolding their averred allegations and contentions regarding suit properties, and same would require some time. Till then, the suit properties are required to be protected and prevented from changing hands.

34. The purpose of protecting the suit properties is to avoid multiplicity of proceedings and technicalities in the suit. As above, on count of deft no. 13's recent sale transaction of year 2021, plaintiffs have to seek requisite remedy against it by amending the plaint. To avoid such complications, which in view of above discussed facts, can be fore-casted, the properties are required to be protected and prevented from changing hands.

35. Considering the contesting pleading of the parties and more specifically defendants wherein, some contend about plaintiffs ouster and some admit plaintiffs ancestral interest in suit properties. At this stage of the suit, plaintiffs unfold their *prima-facie* case, which tilt balance of convenience in their favor and if this application is rejected, they would suffer irreparable loss.

36. Accordingly, by giving my finding towards point nos. 1, 2 & 3 in affirmation, towards point no. 4, I pass following order.

ORDER

1. Application is allowed.
2. Defendants are temporarily restrained from creating third party interest over suit properties in any manner, without following legal procedure, till the final disposal of the suit.
3. Both plaintiffs and defendants are directed to proceed expeditiously and conclude the matter.
4. No order as to costs.

Date : 17.11.2022

(Vinay B. Kamble)
Jt.Civil Judge, Senior Division
Shrirampur.

CERTIFICATE

I affirm that, the contents of this PDF file order are same word to word, as per the original.

Name of the Court : Jt. Civil Court, Senior Division,
Shrirampur, Dist.Ahmednagar.

Name of Stenographer : Ajinath A. Padalkar,
Stenographer (Grade-II)

Date of order : 17.11.2022

Signed by Presiding Officer on : 17.11.2022

Uploaded on : 17.11.2022