

MHAH080014592019

Shankar Karbhari Mate



Vs.

Rohidas Karbhari Mate etc.

ORDER BELOW EXH.5 IN RCS 830/2019

This is suit for partition, declaration and permanent injunction along with an application for interim injunction under order XXXIX rule 1 and 2 of the Code of the civil procedure, 1908 (hereinafter referred in short as C.P.C.) to restrain defendant no.1 and 6 from alienating the survey no. 54/20 and 54/19 respectively to third person by way of sale deed, mortgage, gift or in any other way .

Description of the suit property -

2. The land bearing Survey no. 54/20 i.e. plot no. 62 and 54/19 i.e.plot no. 55 (old survey no.252/4) having an area 0.02 R and 0.2.75R respectively situated at village - Ghulewadi Tal. Sangamner Dist.Ahmednagar which is more particularly described in plaint para no.1C. [Hereinafter, referred in short as ‘Suit properties’]

The pith and substance of plaintiff’s case is -

3. According to plaintiff the suit properties are purchased out of income of plaintiff’s job and joint family income on 05.06.1987 by way of executing separate registered sale deeds in name of defendant no.1 from third person Satish Ramkisan Khandelal. The partition of the suit properties is not done yet by metes and bounds between

parties. According to plaintiff, defendant No. 1 has sold out survey no.54/19 to defendant no.6 on 30.01.2016 by way of registered sale deed. Plaintiff came to know about alleged sale deed on 20.01.2019 after receiving the 7/12 extract of the survey no. 54/19. Suit properties are not self acquired properties of defendant No. 1. The suit properties are purchased on 05.06.1987. That time, defendant no.1 taking education. He has no means of livelihood. Suit properties are joint family properties of plaintiff and defendants. Plaintiff and defendant no. 2 to 5 have their undivided share into the suit properties. Though, name of defendant no.1 is entered into revenue record of the suit properties, but defendant no.1 is not absolute owner of the suit properties. Defendant no. 1 is not manager of the joint family. Defendant no.1 has not sold the survey no. 54/19 for the legal necessity of the joint family. Defendant no. 6 has not taken previous consent of plaintiff and defendant no.2 to 5 for executing sale deed. The sold area is more than the share of defendant no.1 in the suit properties which he received after partition. Defendant no.6 is not bonafide purchaser. Now plaintiff is in threat that if defendant no.1 and 6 have alienated the suit properties, it will cause ir-repairable loss to plaintiff.It will create multiplicity of proceedings. Hence, plaintiff is constrained to file present suit. Plaintiff has prima facie case. Balance of convenience lies in favour of plaintiff. It will take much time to decide the suit. If application is allowed it will cause no ir-repairable loss to defendants and vice-versa. Hence, the

application.

4. Defendant no.1 appeared but, he failed to file his written statement and say. In spite of giving sufficient amount of time he did not file his say. Suit proceeds further ex-parte against defendant no.6. Hence, application proceeds further without say of defendant no.1 and 6.

5. Heard learned advocate for plaintiff Shri Y. S. Datrange at length. In spite of giving sufficient amount of time advocate for defendant no.1 and 6 failed to argue. Hence, in view of urgency pressed by advocate for plaintiff application is taken for disposal without argument of defendant no. 1 and 6.

6. Following points do arise for my consideration in view of application and argument. The findings against each point is recorded along with reasons thereof-

Sr.No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaintiff has made out prima-facie case ?	Yes
2.	Whether the balance of convenience lies in favour of plaintiff ?	Yes
3.	Whether the plaintiff will suffer irreparable loss, if the order of injunction is not granted in their favour ?	Yes

4.	What order ?	The application is allowed.
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REASONS,

7. The plaintiff has relied on certified copy of 7/12 extracts of survey no.54/20,54/19 and copy of sale deed dt. 30.01.2016 in respect of survey no. 54/19 filed along with list at exh.3.

8. on the other hand defendant no.1 and 6 did not produce any document on the record.

AS TO POINT NO.1 TO 3 -

9. All points are interlinked, hence, I am discussing them all together in order to avoid repeatation.

10. It is the case of plaintiff that, the suit properties are purchased out of income of joint family. According to plaintiff, partition of the suit properties are not done yet by meets and bounds. According to him, defendant No. 1 is not the manager of the joint family, inspite of that, by taking disadvantage of entry of his name into revenue record of the suit properties, he has sold out the survey no. 54/19 to defendant No. 6 namely Rupali Sahebrao Dhone. Defendant No. 1 is also trying to sell the survey No. 54/20 to third person without his consent. According to plaintiff, along

with defendant No. 2 to 5 he has undivided share in the suit properties. The plaintiff can not succeed, unless showing his interest or share into the suit properties. Therefore, it is necessary to see as to what evidence is brought by the parties on the record to hold that, they are having share or interest into the suit properties.

11. So far as documentary evidence is concerned, plaintiff has filed certified copy of 7/12 extract of the survey No. 54/20 and 54/19 on the record. Upon perusal of 7/12 extract it is seen that, the name of defendant No. 1 and 6 have been entered into occupier column of the revenue record of the suit properties. However, name of plaintiff nowhere entered into revenue record of the suit properties. Perusal of 7/12 extract of the suit properties reveals that defendants are in possession of the same and not the plaintiff. However, copy of a sale deed dated 30.01.2016 reveals that, defendant No. 1 has sold out the survey No. 54/19 to defendant No. 6. Possession of survey No. 54/19 i.e. plot No. 55 is also handed over to the defendant No. 6 on the same day. However, it is matter of record that, present suit is for the partition, separate possession of shares out of the suit properties between parties. It is also matter of record that, defendant No. 1 and 6 did not contest the suit as well as application by filing their say. It is matter of record that, plaintiff and defendant No. 1 to 5 are co-sharers.

12. The plaintiff and defendant No. 2 to 5 have undivided shares and interest into the suit properties. However, it is settled law that, revenue entries are not prima-facie proof of title. They does not extinguish the title. They are only meant for fiscal purpose. At the same time section 157 of Maharashtra Land Revenue Code, 1966 provides that, revenue entries presumes to be genuine unless contrary is proved. Thus, prima- facie case exists in favour of plaintiff.

13. So far as the ingredients of balance of convenience and irreparable loss are concerned, it can be said that since the plaintiff and defendant No. 2 to 5 have undivided share in the suit properties. Hence, it is the duty of the court to protect their undivided shares into the suit properties in order to avoid multiplicity of the proceedings. Therefore, balance of convenience lies in favour of the plaintiff. If application is dismissed, it will cause ir-repairable loss to plaintiff and the vice-versa. Therefore, I answered point no.1 to 3 in the affirmative.

AS TO POINT NO.4 -

14. The Plaintiff has succeeded to establish golden rules with respect to the suit properties that is prima-facie case, balance of convenience and irreparable loss which are required for issuance of temporary injunction against defendant no. 1 and 6. Therefore, the application is

deserves to be allowed. Cost of application shall follow the event. Hence, in answer to point no.4, I pass the following order.

ORDER

1. The application (Exh.5) is allowed.
2. The defendant no.1 and 6 are hereby temporarily restrained from alienating the Survey no. 54/20 and 54/19 i.e. suit properties situated at village-Ghulewadi, Tal.Sangamner, Dist. Ahmednagar by way of sale deed, mortgage, gift or in any other manner till final decision of the suit.
3. Cost in cause.

Sangamner
Date :25.10.2024.

(K.K.Patil)
2nd jt. Civil Judge, Jr. Dn.,
Sangamner.