

MHAH140020282021



R.C.S. No.1315/2021

ORDER BELOW EXH. 5

This is an application filed by plaintiff for grant of temporary injunction against defendants.

2. Plaintiff in short submitted that 1 H. 71 R in Gat No. 348/1 and 1 H. 12 R in Gat No. 348/2 of village Ranjangaon, Tal. Newasa are suit properties. Plaintiff and defendant No. 1 to 3 are real brothers and defendant No. 4 is their sister. Father - Manaji and mother - Nanibai of plaintiff and defendant No. 1 to 4 have died. There was one more brother to plaintiff and defendant No. 1 to 4 i.e. Gopinath Manaji Pehere who has died. Father of plaintiff died on 11/08/1980. After his death, above property is recorded in name of plaintiff, defendant No. 1 to 4 and their brother as heirs by way of mutation No. 318. Therefore above properties are ancestral properties of joint Hindu family. No partition has taken place between plaintiff, defendants and their brother – Gopinath till date. After death of Manaji, plaintiff and defendants were cultivating suit properties and taking income therefrom jointly.

3. Plaintiff further submitted that defendant No. 1 – Pandhrinath was looking after all financial transactions as joint Hindu family karta. Plaintiff had gone to Bhende for working there. In absence of plaintiff, defendant No. 1 has got recorded 2/5 share out of suit properties in his name by mutation No. 972. Defendant No. 2 and deceased Gopinath have executed bogus sale deed on 04/02/2002 of 1 H. 12 R out of Gat No. 348 in favour of defendant

No. 5 and accordingly on the basis of mutation No. 2137, two 7/12 extracts of Gat No. 348 i.e. 7/12 extracts of Gat No. 348/1 and 348/2 have been prepared. Defendant No. 5 has got recorded his name in record of rights illegally and thereafter defendant No. 5 has sold property to defendant No. 6 and thereafter defendant No. 6 has sold 56 R area to defendant No. 7. Partition between plaintiff, defendant No. 1 to 4 and deceased Gopinath has not taken place, even then, above transactions have taken place in order to deprive plaintiff of his undivided share. Plaintiff was not knowing about above transactions till date. Plaintiff has not got any benefit from above sale transactions.

4. Plaintiff further submitted that in October 2021, plaintiff had been to defendant No. 1 and 4 and asked for partition but they refused. Thereafter plaintiff extracted all documents and he came to know about above transactions. Therefore plaintiff is constrained to file this suit. Plaintiff has prima facie case and balance of convenience in his favour. Therefore application may kindly be allowed.

5. Defendant No. 2 has filed say at Exh.22 and in short contended therein that partition between plaintiff and defendants has taken place in 1980. Thereafter defendant No. 2 has sold 1 H. 12 R in Gat No. 348 to Sitabai Rambhau Pehere by sale deed No. 420/2002. Defendant No. 2 has relinquished all his rights in suit properties at the time of above sale deed. Defendant No. 2 has received consideration of above sale deed. After above transaction of sale deed, plaintiff had not taken any objection. Tukaram and Pandurang have sold their shares to Pandharinath Manaji Pehere before witnesses. Tukaram has not taken any objection anywhere regarding above transaction. Defendant No. 2 has no concern with Gat No. 348. Defendant No. 2 has performed marriage of daughter of plaintiff. Cri.M.A. No.

376/2017 has been filed to harass to defendant No. 2. Hence application may be rejected with heavy costs.

6. Defendant No. 1 and 3 have filed their say at Exh.13 and in short contended therein that partition between heirs of Manaji i.e. plaintiff and defendants has taken place on 27/12/1990 and on the same day, Tukaram and Pandurang have given their share to Pandharinath after accepting Rs.3,000/- each. As per above partition, western side 1 H. 73 R in Gat No. 348 is in possession of defendant No. 1 as owner thereof. Out of consideration amount of his share, plaintiff has purchased property No. 420 at village Ranjangaon, Tal. Newasa from Sinna Maruti Shinde. Plaintiff has constructed bungalow at Bhenda and he resides there. Plaintiff has no concern with 1 H. 71 R in Gat No. 348/1 of defendant No. 1. Plaintiff has also no concern with Gat No. 348/2. Therefore application may be rejected with costs.

7. Defendant No. 4 has filed say at Exh.39. Defendant No. 6 and 7 have also filed say at Exh.37. They have also opposed the application as above.

8. In view of the above pleadings of plaintiff and defendants, following points arise for my determination and I have given findings thereon along with reasons as under -

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether plaintiff has <i>prima-facie</i> case?	No.
2. Whether the balance of convenience lies in favour of plaintiff?	No.
3. Whether irreparable loss will be caused to plaintiff if temporary injunction is refused?	No.
4. What order?	As per final order.

REASONS

Documents filed by Parties :-

9. Plaintiff has filed certain documents on record i.e. 7/12 extracts of Gat No. 348/1 and 348/2, copies of mutation No. 318 and 972, copy of sale deed dated 04/02/2002 etc.

10. On the other hand, defendants have filed certain documents on record i.e. copy of partition receipt dated 27/12/1990, receipts dated 27/12/1990 etc.

AS TO POINT NO. 1 TO 4 :-

11. Heard both sides and perused the documents on record carefully. This is suit for partition, separate possession, declaration and permanent injunction. 7/12 extract of Gat No. 348/1 shows name of defendant No. 1. 7/12 extract of Gat No. 348/2 shows name of defendant No. 6 and 7. Copy of mutation No. 318 shows names of heirs of Manaji Pehere and Gat No. 348. Copy of mutation No. 972 shows names of plaintiff and defendant No. 1. Copy of sale deed dated 04/02/2002 shows that Gopinath Manaji Pehere and Kisan Manaji Pehere sold 1 H. 12 R in Gat No. 348 to Sitabai Rambhau Pehere.

12. Copy of partition receipt dated 27/12/1990 shows that partition took place between Pandharinath and Gopinath and Kisanrao. Receipt dated 27/12/1990 shows that plaintiff sold his share in Gat No. 348 to Pandharinath for Rs.3,000/-. Another receipt dated 27/12/1990 shows that Pandurang transferred his share to Pandharinath.

13. It is to be noted that it is case of plaintiff that partition between heirs of Manaji has not taken place till date. Even then, suit properties have been transferred. In order to deprive plaintiff of his share in suit properties, fraud has been committed with him. After

October 2021, plaintiff came to know about above transactions when he extracted documents of suit properties. It is seen that defendants have filed documents regarding partition and sale of properties to defendant No. 1 on record. But these documents are on plain paper and not registered, so, these cannot be relied upon as per provisions of law. It is to be noted that copy of sale deed dated 04/02/2002 shows that it is registered sale deed. 7/12 extract of Gat No. 348/2 shows names of defendant No. 6 and 7. Further there is nothing on record showing that plaintiff was not knowing or he has come to know about the above documents or transactions recently. From record, it appears that Ranjangaon is not far away from Bhenda. Therefore at this stage, considering all circumstances on record, it appears that plaintiff has failed to make out a case for grant of temporary injunction. Whether plaintiff is entitled to partition, separate possession, declaration and permanent injunction or not will be decided at the time of full fledged trial. Hence considering all circumstances of the case and also in the interest of justice, I answer point no. 1 to 3 in negative and in answer to point no.4, I proceed to pass following order -

:- ORDER :-

1. Application is rejected.
2. No order as to costs.
3. Application is disposed of accordingly.

Date : 27.11.2023

(Shri. A.M.Husain)
Jt. Civil Judge, S.D.
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