

Reg. Civil Suit No.44/2022
CNR NO. MHAK060011282022
Rajvir & Ors. Vs. Bhujang+2.

Order Below Exh.05
(Passed on 04-03-2023)

The present application has been filed by the plaintiffs under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

2. The contents of the application in short are as under;
That, the plaintiffs own Gut No.54 of Mouje Girjapur Tq. Akot, Dist.Akola measuring 2H-2R. The aforesaid land hereinafter called as "suit land" was recorded in the name of father of plaintiff Nos.1, 2 and husband of plaintiff No.3 and also one brother of Ashish Ingle by name Amrish Alias Narendra Ganeshrao Ingle but as he died issueless, his mother plaintiff No.4 is also recorded as co-owner with plaintiffs 1 to 3 and accordingly the land is owned and possessed by the plaintiff. Initially the names of Ashish Ganeshrao Ingle and Narendra Ganeshrao Ingle were recorded as owner as they were grandsons of Kesharbai Vishwanath Ingle who died on 01.12.1993 but before her death she had made a will in favour of her two grandson Ashish and Narendra and since then the land is under cultivation of the plaintiffs and the 7/12 extract are accordingly recorded in the name of plaintiffs.

3. The defendant No.1 is also grandson of Kesharbai. The defendant No.1 however, filed an appeal bearing No. RTS-59/Girijapur/53/2020-21 against Ferfar No.212-A before defendant No.2 by contending that it was orally agreed that Gut No.53 was to be given to the defendant No.1 and Gut No.54 was to be divided in two parts one part measuring 1H-01R should be given to the father of plaintiffs 1 and 2 i.e., Ashish and 1H-01R was to be given to the defendant No.1. This was totally false and also contrary to the land records. Gut No.53 was recorded as given to the share of Ashish and Narendra by partition and Gut No.54 was mentioned as to her share by partition, which entries reveal distribution of lands was done by Vishwanath and she had made a will in favour of Ashish and Narendra. The Sub Divisional Officer however, dismissed the appeal and also found that, the defendant No.1 could not establish his ownership over 1H-01R land and inspite of dismissal he found that, ferfar No.212-A should be cancelled. This was order without jurisdiction when the appeal was dismissed and the order is therefore, bad in law and cannot decide any of the rights of the parties and still requiring Ferfar No.212-A to be cancelled is bad in law also not within jurisdiction of the appellate Court while dismissing the appeal.

4. At any rate when all the record were showing ownership and possession of the plaintiffs and even on cancelling the ferfar the exclusive right of the defendant No.1

cannot come into existence and by no reason he can dispossess the plaintiffs who are also sons of grandson of Kesharbai. The land Gut No.54 recorded in the name of the plaintiffs father, both were under joint cultivation of the plaintiffs but after the order the defendant No.1 fixed wooden pegs in between the lands without any measurement and is no trying to disturb the possession of the plaintiffs over Gut No.54. It is submitted that, the plaintiffs cultivation has been continuous and even land revenue is paid by them and even then the defendant No.1 has stolen the gram crop in the said land and the plaintiff has reported the matter to police. It is therefore, likely that the defendant No.1 would continue to disturb the possession of the plaintiffs and hence plaintiffs file this suit for permanent injunction restraining the defendant No.1 from disturbing the possession of the plaintiffs and not entering the suit land and at any rate not entering the suit land without obtaining possession by following due process of law.

5. The plaintiffs have also filed appeal against the order of Sub Divisional Officer dated 18.12.2021 and stay has also been granted by Additional Collector, Akola. However, the defendant No.3 without even waiting for appeal period cancelled the ferfar No.212-A and this activity of defendant No.3 is also unwarranted by law in as much as the Sub Divisional Officer required the Talathi to take entries of legal heirs according to law but defendant No.3 cancelled the ferfar for

creating confusion by such cancellation and without recording the name of legal heirs as required by Sub Divisional Officer his action is also therefore, liable to be declared as void. Though the plaintiffs are in actual possession and have a strong prima facie case, in case the defendant No.1 continues to disturb their possession plaintiffs would suffer irreparable loss and would have to face inconvenience. Therefore, plaintiffs have constrained to file the present suit and present application, i.e. (Exh.05).

4. Defendant No.1 has filed W.S./say to the suit and application vide Exh.12-B. Suit is proceeded ex-prate against defendant Nos.2 and 3. Defendant No.1 has resisted the application and denied the contents of application. His contention is that, he is in possession of the suit property since, the period of his father. The suit land was never given by the will by deceased Kesharbai. The alleged will is bogus and illegal. It is never executed by deceased Kesharbai. By way of additional reply he submitted that the false and vexatious suit filed by plaintiffs without any legal right and without any base, and on the basis of fraudulent documents. That, the frame of the suit is against the provisions of law. Therefore, the plaintiffs have no any possession over the suit property. Plaintiffs have no prima facie case in their favour. Therefore, lastly defendants prayed to reject the temporary injunction.

5. The points for determination along with my findings thereon are as under :-

<u>Points</u>	<u>Findings</u>
1) Whether the plaintiffs have made out a prima-facie case in their favour ? ...	No.
2) Whether the plaintiffs have proved that balance of convenience lies in their favour ?...	No.
3) Whether the plaintiffs have proved that they will suffer irreparable loss, if injunction would not be granted ? ...	No.
4) What order ? ...	As per final order.

6. Heard argument of learned Advocate for plaintiffs Shri R.B.Agrwal and learned Advocate for the defendant No.1 Shri G.K.Tikar. I have also considered written notes of plaintiff filed at Exhs.39 and 43 and of the defendant filed at Exhs.40, 44 and 51.

REASONS

As to point Nos. 1 to 4 :

7. The plaintiffs have claimed that, they are owner of the suit property bearing Gut No.54 of the village Girjapur, Tq.Akot, Dist. Akola admeasuring 2H-2R. They have claimed their ownership on the basis of will dated 19.10.1993 executed

by the grand mother of the plaintiffs No.1 and 2 name Kesharbai and since they are in possession of the suit property. The defendant his contention is that, he is in possession of the suit property since, the period of his father. The suit land was never given by the will by deceased Kesharbai. The alleged will is bogus and illegal. It is never executed by deceased Kesharbai. The plaintiffs have produced many documents including 7/12 extracts of land Gut No.53 and 54 for the year 2019-20, copy of mutation bearing No.212-A, copy of order of the Sub Divisional Officer, Akot in the vide bearing No.समाक्र.आरटीएस—५९/गिरजापुर/५३/२०२०—२१ dated 28.12.2021. He also filed an documents below list Exh.50 including copy of mutation bearing No.200-A. The plaintiffs have filed written notes of argument below Exh.39 and written reply of the plaintiffs to the argument of the defendant at Exh.43. The plaintiffs have also produced documents below Exh.16 including Xerox copy of revenue receipts, and cross statement, so also extracts of mutation entry bearing No.34 & 35 of the village Girjapur.

8. The defendant has filed written notes of argument below Exh.40 and 44. The defendant has also filed the additional written notes of argument below Exh.51. The defendants have also produced documents below list Exh.42 including Xerox copy of sale deed bearing no.434 of 1952, 7/12 extract of survey No.21 of the suit property, copy of extract

mutation entry bearing No.167, 7/12 extract of Gut No.54, copy of alleged will, an agreement between plaintiffs and defendant in respect of the suit property at below list Exh.42 (D-20), copy of panchnama dated 10.02.2022 prepared by village Talathi of village Girjapur, another copy of panchnama dated 15.07.2022 prepared by Talathi, the revenue receipts.

9. Prima facie, it appears from the sale deed bearing No.434 of 1952 that the land survey No.21 of village Girjapur was purchased by deceased Vishwanth Namdeo Ingle from one Tukaram Kumbar in the year 1952 which was admeasuring 8 Acre 9 Gunte. Latter on said land divided into two gut numbers i.e., Gut No.53 and 54. It appears from the mutation entry bearing No.33 of village Girjapur that the land to the extent of 2H-2R was given in partition by Vishwanth Ingle to Kesharbai in the year 1986 and land to the extent of 1H-31R was given in partition by said Vishwanth to Ashish son of Ganeshrao and Amrish alies Narendra Ingle. It appears from the 7/12 extract of land Gut No.54 admeasuring 2H-2R that the name of Kesharbai Vishwanth Ingle, resident of village Girjapur has been shown as an owner and her name appears on the land Gut No.54 since, the partition till 1997 to 2002.

10. It appears from the 7/12 extract of Gut No.53 that the land 1H-31R standing in the name of plaintiffs and it

appears from the 7/12 extract of Gut No.54 the 7/12 extract of the Gut No.54 standing in the name of Kesharbai Ingle. Prima facie, on perusal of copy of will it appears that, it is executed by Kesharbai on 19.10.1993 in respect of the land Gut No.53 admeasuring 2H-2G of village Girjapur, and out of 2H-2G land deceased Kesharbai has given 1H-1G land to Ashish Ingle father of plaintiffs No.1 and 2 and Amrish alias Narendra Ingle brother of Ashish Ingle.

11. The plaintiffs have claimed their right over the suit property as an owner. On the basis of this will in respect of suit property land Gut No.54, however, prima facie, it appears from the copy of will which is produced by the defendants that the said will is not executed in respect of suit land Gut No.54. On the contrary, it appears that it is in respect of Gut No.53.

12. It appears from the mutation entry bearing No.212-A that, it is sanctioned on the basis of will. However, in mutation the land Gut No.54 has been shown and the land Gut No.54 does not appear in the will. On the contrary the land Gut No.53 appears in the alleged will. The mutation entry bearing No.212-A appears to be sanctioned by the S.D.O., Sub Divisional Officer, Akot in the file bearing number रामाक्र.आरटीएस-५९ / गिरजापुर / ५३ / २०२०-२१ dated 28.12.2021 and in the result the name of deceased Kesharbai appeared in the land Gut No.54 in the record of right.

13. Prima facie, it appears from the agreement dated 14.12.2021 between defendants and plaintiffs that, the plaintiffs have admitted the mutation entry bearing No.212-A has been taken wrongly on the basis of false will dated 01.12.1993. They have further, appears to be admitted that, they alleged will is not in respect of the land Gut No.54 but it is in respect of the land Gut No.53.

14. It also appears, prima facie, from the consent deed executed between defendant No.1 and Vachalabai Jagannath Ingle, Pravin Jagannath Ingle, parmila Ramesh Nahathe, Mangala Yadavrao Adhav and Suganda Gawande, that Parmila, Mangala and Suganda being daughters of deceased Kesharbai Vishwanth Ingle have executed this consent deed and admitted that, deceased Kesharbai was owner of the land Gut No.53 admeasuring 2H-2R on the basis of partition effected by his husband Vishwanth Ingle, in the year 1986. She has not executed will in respect of the land Gut No.54, the defendant No.1 is in possession of land Gut No.54 2H-2R since, the death of his father Jaganath Vishwanth Ingle i.e. from 12.10.2002.

15. Prima facie, it appears from the panchnama prepared by concerned Talathi on 10.02.2022 that, the defendant is in possession of the suit property. The concerned Talathi has also reported on the basis of panchnama to the Tahsildar, Akot

regarding the possession of the defendant No.1 over the suit property. The concerned Talathi has also prepared panchnama on 15.07.2022 regarding possession over the suit property and reported the possession of the defendant No.1 over the suit property, to the Tahsildar, Akot.

16. In view of above discussion, prima facie, I am of the opinion that the alleged will is in respect of the land Gut No.54 the suit land was in the possession of deceased father of the defendant No.1 during his lifetime and after his death it is in possession of defendant No.1. The plaintiffs have falsely get sanctioned the mutation entry bearing No.212-A on the basis alleged will dated 19.10.1993. Therefore, prima facie, I am of the opinion that, the present plaintiffs are not in the possession of the suit property. On the contrary, it appears to me that the defendant No.1 is in possession of the suit property.

17. In view of my prima facie opinion as above the plaintiffs have failed to made out their prima facie case. As the defendant No.1 appears to be in the possession of the suit property, therefore, it would be inconvenient for the defendant No.1 if the temporary injunction is granted in favour of the plaintiffs and their would be irreparable loss to the defendant No.1. Therefore, the balance of convenience lies in favour of the defendant No.1 it does not lies in favour of the plaintiffs if the

temporary injunction passed in favour of the plaintiffs, then there would be irreparable loss to the defendants. Hence, I answer point Nos.1 to 3 in the negative and in answer to point No.4, I pass following order.

ORDER

Application (Ex. 5) is hereby rejected with costs.

Akot.

Date: 04-03-2023.

(B.N.Chikne)

Civil Judge (S. D.), Akot.