

Order below Exh-05.

(Passed on 05.08.2019)

1. This application is made by the plaintiff for grant of temporary injunction under Order XXXIX, Rule 1 & 2 R/W Sec. 151 of the Code of Civil Procedure (hereinafter referred to as "CPC"),
2. Heard learned advocate Shri. P.S.Bhadange for the plaintiffs and learned advocate Shri.S.R.Kambe appearing for the defendants at length.
3. The plaintiffs have filed this suit for permanent injunction. The plaintiffs' case in short is that, field bearing gut no. 191 old survey no. 27/1-A ad-measuring 1.65 H.R. land situated at village Parad, Tq. Murtizapur Distt. Akola (hereinafter referred to as the suit property).
4. The plaintiffs father by name Baliram Ramchandra Thak (Mali) is in cultivating possession of the suit field as a protected tenant till his death as per the Tenancy Act 1958. The entry regarding to the same is recorded in the record of rights. The owner of the field was shown one Purnamai Sansthan Parad Deosthan. After the death of Baliram, the plaintiffs were in cultivating possession of the field as a tenant and their names were also recorded in the revenue record. The defendants are not having any concerned with the suit field inspite of that they are trying to disturb the peaceful cultivating possession of the plaintiffs over the field. In the current year, plaintiffs moved an application before Tenancy Tahsildar Murtizapur for issuing of purchase certificate under the provisions of Tenancy Act. The proceeding is bearing No. TNC-46/Pard/15/2018-19. After due inquiry, the Tenancy Tahsildar has passed an order on 31-01-2019 and allowed the application of plaintiffs and declared them as a owner of the field and issued sale certificate. The defendant have challenged the said order before the Sub-divisional Officer, Murtizapur.
5. The defendants are alleging that they are the legal heirs of Kisan Mahadeoji Mali but the property is not belonging to Kisan Mahadeoji Mali. So defendants have no any heritable right in the suit property. But they are trying to disturb peaceful possession of plaintiffs over the suit property. On 24-03-2019, the defendant no. 1 & 2 illegally obstructed the plaintiffs and their sons from cultivating the suit field. So plaintiff no.1 has lodge report against the defendant no. 1 & 2 to police station Murtizapur (Gramin) on 25-

03-2019. On the report of plaintiff no.1 the police station officer, Murtizapur has lodged N.C. report under section 323, 504, 506 of IPC and directed to file case before the court. Hence, plaintiffs have constrained to file present suit along with temporary injunction application against defendants.

6. On the contrary, defendants have appeared and filed their reply cum written statement vide Exh-11. They denied all allegations of plaintiffs. They further submitted that the suit property is a trust property and permission of that Charity Commissioner was necessary to institute the suit in respect of any trust property. There is no whisper through out the plaint in respect of the same. The language used by the plaintiffs against the owner of the land is itself explanatory of the fact that, the plaintiffs wanted to suppress some true and clear facts from this court otherwise they could have been a bold statement base on true facts and only to misguide and mislead the court only to get the favourable orders and nothing more than that.

7. The suit property is trust property of Puranamai Sansthan Parad having its registration No. A-122/Akola it is a Religious and Charitable Trust. The creation and object of the trust is Religious and Charitable it being so the legal position is well settled that, "the tenancy rights are not heritable", the plaintiffs approached is based on wrong motions of law and they are under wrong impression that the general rights of tenancy. The tenancy rights come to an end as soon as the original tenant is dead and the possession of his successors will be as a trespasser and trespasser is not entitled for injunction against its true owner. Herein the facts is that the true owners is not made party. The defendant no.1 is a sole trustee of the trust and he is managing and looking after the trust property. The trust being the true owner Shri. Bramhadeo Kisan Thak being trustee of the same is legally entitled to take care of the property and in capacity of trustee is legally entitled to protect the trust property. The act of Bramhadeo Kisan Thak and his family members in the capacity of trustees and beneficiary. The plaintiffs are in the family of Thak. They are well aware of the fact that Kisan Sahadaji Mali is no more long back. The plaintiffs have presented an application for issuing purchase certificate to tenancy Tahsildar against whom. Why there is no whisper because it had been mentioned it would have cleared the picture that bogus untenable application is presented showing a dead person to be trustee of the trust. The proceeding was initiated against a wrong person with ill motive. The orders and proceeding are not binding on the present defendants or the true owners of the same. The defendant no. 1 is a trustee and the other

defendants are the beneficiaries of the same. They are not dragged in the present proceeding in the capacity of the trustee of a particularly trust or beneficiaries of trust. So the suit of the plaintiffs is defective against the wrong persons. It is not filed against the true owner and because of the same application as well as on that point suit is liable to be dismissed. If the application is allowed then it will caused great irreparable loss to the legal valuable rights of the defendants without any fault. On all these grounds, they prayed for rejection of application.

8. To decide this application, following points arise for my determination and I have recorded my findings thereon with reasons therefor as under:-

Sr.No.	Points	Findings
1)	Whether plaintiffs have prima-facie case in their favour?	Yes.
2)	Whether balance of convenience lies in favour of the plaintiffs?	No.
3)	Whether plaintiffs will suffer irreparable loss, if temporary injunction is refused?	No.
4)	What order?	Application is rejected.

REASONS

9. In support of their contention, plaintiffs have filed copy of NCR, 7/12 extracts, mutation entry, revenue receipts, ferfar, Order of Tahsildar, Murtizapur, copy of Challen, sale certificate, letter in respect of sale certificate, 7/12 extract along with list Exh-04.

10. On the other hand, defendants have filed copy of The Registrar of Public Trust Form III, change report along with list Exh-18, PTR, 9/3, 9/4 along with list Exh-23 and death certificate of Kisan Mahadeo @ Chahadaji Thak along with list Exh-26.

11. Learned advocate Shri. P.S.Bhadange appearing for the plaintiffs have relied upon the following citations:-

*i) Sainath Mandir Trust vs.. Viajaya w/o. Vithalarao Mandale
And on 27 March, 2003.*

*ii) Maharashtra Shetkari Seva Mandal ..vs.. Bhaurao Bayaji
Garud on 4 February, 2010.*

As to point No.1 to 3:-

12. All these point are inter related to each other. Hence, taken together for discussion. The fact that Shri Purnamai Sansthan Parad is owner of suit property and father of plaintiffs' after his death plaintiffs were in cultivating possession of the same is appears from the 7/12 extracts filed on record along with list Exh-04 Sr.No. 2 to 4. It is also seen that as per record of right survey no. 27/1-A is in possession of Baliram Mali as tenant and survey no. 27/3 is also owned by Baliram Ramchandra Mali and it is in his cultivation. This entry is recorded in the year 1960-61. As per mutation entry of survey no. 27/1 the names of Brahmadeo Kisan, Kawatik Kisan, Prabhavati Kisan were recorded as owner and another entry below this entry i.e. 27/1-A is owned by Shri Purnamai Sansthan Parad and name of Baliram Mali recorded as tenant and in his cultivating possession. Ferfar No. 154 is seen that survey no. 27/1-A is transferred through Will dt- 08-11-1931 by Maina Krushnaji Mali to Shri Purnamai Sansthan Parad and said property is cultivating by Shri. Baliram Mali on batai basis since 1958-59 as per Bombay Tenancy and Agricultural Act, 1958 and Rule 8(2) of Vidarbha Region and Kachha Pradesh. Hence, Baliram is become tenant. It is also seen from said ferfar on behalf of Purnamai Sansthan Baliram is present. After his death, appointment has not been made and order of it claimed. Said entry was recorded on 13-11-1964. Then another entry shows that Baliram is present, no order, rejected is recorded on 09-11-1965.

13. As per order of Tahsildar, Murtizapur in TNC -46/Pard/15/2018-19 dated 31-01-2019, it is seen that said application was filed against Purnamai Sansthan Parad Deosthan through Kisan Mahadeoji Mali. It is decided exparte/ without appearance and evidence of other party. Tahsildar has held that as per Section 43 of Bombay Tenancy and Agricultural Land (Vidarbha Region & Kachha Pradesh) Act, 1958 gut no. 191 old survey no. 27/1-A, ad-measuring 1.65 H.R. situated at Parad purchase certificate issued on payment of Rs. 4,866.91 paise in favour of plaintiffs. Then accordingly, Challen dated 02-02-2019, plaintiffs have paid said amount. Then, Tahsildar has issued letter for its registration to the Sub-Registrar-I, Murtizapur and

accordingly sale certificate is issued in favour of plaintiffs. Then their names appeared in as tenant in other rights column in first place. As per documents plaintiffs father was is in cultivating possession of survey no. 27/1-A since 1958. But thereafter, plaintiffs have purchased said property and sale certificate was issued in their names.

14. On the other hand, documents filed on behalf of defendants i.e. Form III shows that survey no. 27/1 situated at Parad, Dahihanda towards eastern side 4 acre land is entered as Purnamai Sansthan Trust property. Said property is transferred from Will of Mainabai in favour of Trust. Accordingly, it is registered as a Trust property by order of Registrar Of Public Trust, Akola and Kisan Chahadaji Mali is in possession of the same. Accordingly, it is sent to S.D.O.Murtizapur for investigation and early report. Then enquiry was held. As per change report, it is seen that name of Kisan Chahadaji Mali, Ganpat Maroti Bopulkar were deleted and name of Brahmadeo Kisanrao Mali, Shri Panjab Rajaramji Bopulkar were entered as a trustee of Shri Purnamai Sansthan Parad on 18-02-1989.

15. As per copy of PTR entry of change report order was recorded on 27-02-1989 and names of Brahmadeo and Panjab were entered in PTR as trustee of Purnamai Deosthan Parad. As per 9/3 9/4 names of plaintiff no. 1 to 3 recorded in tenant and other right column of owner Purnamai Deosthan Trust. Death certificate of Kisan Mahadeo @ Chahadaji Tak he was died on 28-10-1960 i.e. before mutation entry no.154. It is also appears that said fact of death of Kisan was known to the Baliram i.e. father of plaintiffs. Hence, at the time of entry of dated 10-01-1964 of mutation entry no. 154 only Baliram is present. On behalf of Kisan, no one is appointed. Hence, for appointment the order be obtained is mentioned in mutation entry No. 154 on 13-11-1964. Thereafter on old survey no. 27/1A name of Baliram was recorded as tenant and after his death, plaintiffs names were entered in 7/12 extract of new gut no. 191 i.e suit property. This shows, plaintiffs have prima-facie case on the basis of their possession. Hence, I answer point no.1 in affirmative.

16. Thereafter in the year 1963-64, the name of Brahmadeo Kisan, Kautik Kisan, Prabhavati Namdeo Mali were entered as possessor of survey no. 27/1. Then their names were carry forwarded up to 2009. As the fact of death of Kisan Mahadeo Thak is known to the Baliram and thereafter to the plaintiffs. Then the application for purchasing the survey no. 27/1A is filed against Kisan Thak is appears to be false and suppressing material fact of

death of Kisan Thak from the court of Tahsildar. Then as no one appeared before Tahsildar on behalf of opponent in case TNC-46/Pard/15/2018-19. Hence, the order of purchasing suit property is passed. Therefore, it also shows that from suppressing material fact, the order was obtained.

17. 7/12 extract of suit property issued on 31-12-2018 shows name of Kisan Mahadeoji for Purnamai Sansthan Parad Deosthan in owner column. The plaintiffs admitted that suit property is owned by Purnamai Sansthan Parad and on the basis of their possession, suppressing the fact of death of Kisan Thak from the court of Tahsildar order of purchase of suit property was obtained, then Challen was issued, sale certificate issued in favour of plaintiffs and filed present suit against the legal heirs of Kisan Thak and other persons who are trustee of Purnamai Sansthan Parad Deosthan. Further plaintiffs prayed for injunction against defendants on the basis of purchase certificate.

18. The learned advocate for the plaintiffs argued that suit property is survey no. 27/1A and the trust property i.e. survey no. 27/1 are two different properties and defendants have no concern with the same. But it is necessary taken into consideration from the documents produced on record by plaintiffs, it clearly shows that the property is owned by Trust Purnamai Sansthan Parad Deosthan. Even though entry of said property in Registered Public Trust Form-III, it does not losses its status i.e. owned by trust. The plaintiffs have prayed for temporary injunction against true owner. The authorities filed on record by the learned advocate of plaintiffs are on the point of provisions of Bombay Public Trust Act and tenability of suit filed by plaintiffs. But facts and circumstances therein are not similar to the facts and circumstances of case in hand. Therefore, ratio laid down is taking into consideration.

19. The suit property is ad-measuring 01.65 H.R. whereas the property stated in Form III is ad-measuring 4 acres of land from eastern side of old survey no. 27/1 ad-measuring 20 acres 33 Gunthas. Both properties are different in description and in area. But both are trust property. Now, as per exparte order of Tahsildar, Murtizapur, plaintiffs are declared as owner.

20. But as per ratio laid down by Hon'ble Supreme Court in - *Shriram Mandir Sansthan ...vs.. Vatsalabai reported in 1998 CJ(SC) 836.*

"Tenancy- Section 129 read with Section 54 - The right of land belonging to the trust or educational Institution is not heritable - Section 54 will not apply to the tenants of the trust or educational institution."

21. The provisions of Section 54 is relevant section as far as lands in the Vidarbha Region are concerned. The full Bench upheld the view taken in 1980. In our view, the exclusion of Section 54 by necessary implication also excludes the provisions of ordinary law of Succession and inheritance from the Tenancy of Agricultural lands of institution falling under Section 129(b) which clearly seeks to protect certain lands from the provisions of Bombay Tenancy Act 1958. In this context, if the tenancy of such land are not made heritable, this would clearly be in furtherance of purpose of exempting such lands under Section 129.

22. In present case, suit property is trust property which is a Religious and Charitable Trust. Plaintiffs contended that they are legal heirs of Baliram Thak who is tenant of trust Purnamai Deosthan Sansthan Parad. After death of Baliram, their names were recorded in the revenue record as tenant. In view of ratio laid down by Hon'ble Supreme Court, the tenancy of land belonging to Public Religious Charitable Trust are not heritable. Therefore, even though, the plaintiffs having long standing possession, their rights are not heritable one and suit property is Trust property. Therefore, order obtained from Tahsildar, Murtizapur, is also not proper.

23, Even though, the plaintiffs have proved prima-facie case and possession in their favour. They have suppressed material facts and not come with clean hands. The relief of injunction is an equitable relief. Another point of balance of convenience goes to the defendants. So, restraining the defendants having right to do so would cause irreparable loss to the defendants in the form of infringement of right. Considering aforesaid discussion, reasons and documents filed by both sides, I do not filed any substance in restraining defendants. Hence, in view of above findings, I answer point no. 2 & 3 in negative.

AS TO POINT NO.4:-

24. In view of my findings on point no.1 to 3, above I hold that the plaintiffs are not entitled for equitable relief of injunction. In answer to point no. 4, I pass the following order:-

Ramesh +02 -vs- Bramhadeo +03 // 8 //

R.C.S.No.17/2019
Order below Exh.5

ORDER

1. The application is rejected.
2. Order of exparte ad-interim injunction stands vacated.
3. Costs in cause.

Murtizapur.
Dated : 05.08.2019.

(Smt. J.B.Goyal)
Civil Judge (Jr.Dn.), Murtizapur

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CERTIFICATE

“I affirm that the contents of this PDF file judgment/order are same word for word as per original judgment”

Name of Steno : Shri. P.B.Kute,
Court name : Smt. J.B.Goyal,
C.J. (J.D.) & JMFC, Murtizapur.

Date : 05.08.2019.

Judgment signed by

Presiding Officer on : 05.08.2019.

Judgment uploaded on: 05.08.2019.

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