

Regular Civil Suit No. 50/2023

Balakram + 2 V/S Rukhmabai

.....ORDER BELOW EXH-5.....

(Passed On 29th December 2023)

In a suit instituted vide section 34 and 38 of the Specific Relief Act 1963 for declaration and permanent injunction the plaintiff is seeking the relief of temporary injunction against defendant no.1 restraining her and any person on her behalf from withdrawing the amount of compensation of Rs.41,00,000/- .

Plaintiff case in succinct; -

2. The plaintiffs and defendant no.1 are schedule tribes. Testatrix namely Situbai Babu Mota @Tota had two daughters namely Sonaya Manik Zara and defendant no.1. and she died on 15.08.2019 The plaintiffs no.1 and 2 are sons whereas plaintiff no.3 is daughter of Sonaya Manik Zara who died on 27.11.1980. During lifetime of testatrix her field property bearing Gat no. 18, Area 4.38 H. R, Mauje-Talai (railway), Tal-Dharni, Dist-Amravati was acquired by the Government for Forest project. Under said acquisition proceeding and under the rehabilitation scheme testatrix has been awarded compensation amount of Rs, 41,00,000/- (Forty-one lakh). The said compensation amount has been deposited in account no. 918010079223390 with defendant no.2.

3. It is asserted by the plaintiffs that testatrix since from the death of her daughter (mother of plaintiff) had been resided with them. In the year 2019 defendant no.1 and her husband took testatrix with them and got executed the Will of 10.06.2019 thereby showing bequeath of compensation amount in favour of defendant no.1. According to plaintiffs this Will is forged, illegal, executed without free consent of testatrix. Under the pretext of said Will the defendant no.1 has been claiming the entitlement to the compensation amount.

4. According to the plaintiff when the alleged Will got executed the testatrix was not physically and mentally fit. After the testatrix died the

plaintiff inquired with the forest department about the compensation amount and under the right to information they learnt about the alleged Will. On the basis said Will defendant no.2 transferred the amount of compensation in her account no. 90801007298534 and she may withdraw the amount on the basis of forged Will. After taking the efforts the Forest Division, Akot had issued letter to defendant no.2 and directed them to keep the amount on hold.

5. It is pleaded by the plaintiff that the plaintiff being the legal heirs of predeceased daughter of testatrix have $\frac{1}{2}$ share in the compensation amount and the defendant no.1 cannot claim the entitlement to the whole amount on the basis of such Will. Henceforth, the suit is instituted for declaration that the Will dt. 10.06.2019 is forged, illegal and not binding on the plaintiff and for perpetual injunction restraining defendant no.1 from withdrawing the compensation amount.

Admitted facts; -

- i. The relationship between plaintiff and defendant no.1.
- ii. Death of testatrix.
- iii. Acquisition of field of testatrix.
- iv. Awarding compensation amount to testatrix.
- v. Death of mother of plaintiff.

Defendant no.1 defence; -

6. The defendant no.1 has filed her written statement come reply at **Exh-22**. This defendant has raised tenability of the suit on the ground that the plaintiffs have not claimed relief of either claiming right or interest to the amount and hence the suit is not maintainable. The forest department was necessary party to the suit however they have not been impleaded. The suit is not within the period of limitation.

7. It asserted that testatrix had never been resided with the plaintiff. According to defendant the testatrix and one Kubi Bedy had joint field Gat no.4, and 7 at Talai, Tal-Dharni, Dist-Amravati and said field. The said field have been acquired and the plaintiff have been given the compensation

amount as their share. This fact is suppressed by the plaintiff from the notice of the court. According to the defendant the testatrix had made nominee to the defendant no.1 for account maintain with the defendant no.2. It is her specific case that the testatrix has executed the registered Will in presence of two witnesses while she was in sound disposing state of mind and at free will The defendant no.1 took the care of testatrix and therefore she has bequeathed the amount in her favour.

8. It is asserted that the defendant no.1 has transferred the amount of compensation laying with defendant no.2 in her own account and as on 20.11.2023 the only amount of Rs. 280/- is laying in her account and therefore the suit of the plaintiff as such stands frustrated. On all these grounds the defendant no.1 prayed to reject the application.

9. The defendant no.2 has filed the written the statement come reply at Exh-25. This defendant has pleaded that they will abide the order of the court which will be passed in connection with the amount.

10. The plaintiffs have relied upon the documents filed with list Exh-4 Whereas the defendant no.1 has filed the document at list Exh-23.

Arguments; -

11. The most of argument of the learned counsel for the plaintiff Shri. R.C. Chaumval was in consonance with the pleadings. During his course of argument, he has invited my attention to the documents relied upon by him such as the information received under right to information act, the letter issued by the forest division, Akot to the defendant no.2. He argued that the Will on the basis of which the plaintiff is claiming to have derived the interest is under challenged and even if no relief against the amount is claimed still the question of validity of Will being sub-judiced the plaintiff's suit is well maintainable under the law. According to him the Will apparently appears to be not genuine. Hence, according to him the plaintiff has strong prima-facie case, balance of convenience tilts in his favour and irreparable loss would cause to the plaintiff if injunction is refused.

12. Per contra the learned counsel for the defendant no.1 Shri. D.M Kute argued that the Will in question is registered one and prima-facie the presumption is attributable to the Will. He argued that the Will is well supported by the certificate of doctor and such certificate is at such stage prima-facie sufficient to draw the legal presumption as to sound state of mind of testatrix. According to him the recitals of Will shows the reason of exclusion of plaintiff from the amount of compensation. He further argued that the plaintiff has not claimed the relief of declaration as to the amount and therefore such application cannot be allowed. During course of argument he has invited my attention to section 41 (j) of the Act 1963. According to him the blanket relief is claimed in the suit and the amount is already released and transferred. Hence, he prayed to reject the application.

Sr.No	Points	Findings
1.	Whether the plaintiff has made out prima-facie case?	..No...
2.	Whether the balance of convenience tilts in favour of the plaintiff?	..No..
3.	Whether the irreparable loss will cause to the plaintiff if injunction is refused?	...No..
4.	What order?	Rejected

...REASONS...

13. In this case the question of prima-facie case confines only to the limited question as to right of the plaintiff and defendant no.1. Initially, the entire suit of the plaintiff revolves around the question of validity of Will and its genuineness. Under the Will the amount of compensation has been alleged to be bequeathed to the defendant no.1, resultantly, showing the entitlement to such amount is primarily imperative for the plaintiff to succeed in suit. The plaintiff has specifically challenged the Will on the ground that they have ½ share in the compensation amount and under such pretext they alleged to have locus to challenge the Will. Henceforth, while considering the case of parties this limited question poses as the prima-facie case of the plaintiff.

As to point no.1,2 and 3; -

14. The very first question that needs to be dealt with being raised by the defendant is on tenability of the suit. According to defendant the forest division being not impleaded the suit suffers from non-joinder of necessary party. At this juncture it is expedient to observe here that the relief claimed in the suit are connected to the Will in question which is alleged to be executed in favour of the defendant no.,1. Though under the Will a compensation amount is bequeathed which is awarded to the testatrix by the government. However, the question of compensation and its entitlement being restricted to the personal interest and rights of plaintiff and defendant no.1 the Forest department is not at all necessary party to the suit. Furthermore, Forest department has already released the awarded compensation amount and the circumstances are not such where under the process of award the plaintiff and defendant no.1 are claiming adverse rights. Simply the question of Will and rights of parties to the property bequeathed under the Will is in question and therefore such objection appears to have no force and not sustainable in the eyes of law.

15. Furthermore, the defendant no.1 has raised the tenability on the ground that the suit is barred by law of limitation. It is imperative to mention that the question of limitation is purely the mixed question of fact and law and unless evidence at trial is adduced the court cannot decide the tenability on the limitation. Certainly, the question of limitation is decisive factor to decide the entitlement of plaintiff to the relief claimed. However, such issue being mixed question of fact and law cannot at such stage be considered. Henceforth such contention also requires to be rejected.

16. Now adverting to the question that involves in the application. In order to substantiate the case, the plaintiff has mainly relied upon document no.2, document no.3, document no.6, annexed with list Exh-4. What the document no.2 transpires is that the amount of compensation given to testatrix was transferred in account of defendant no.1. By this letter the Forest division Akot have instructed the defendant no.2 to not release the amount transferred in account of defendant no.1. Furthermore, the document no.3 transpires that by this letter the forest department directed

the defendant no.2 to transfer the amount in account of defendant no.1 but to withhold the same. The other documents such as passbook of testatrix and defendant no.1 are filed on record. Well, such documents are relevant but are prima-facie not sufficient to establish the rights of the plaintiff. Furthermore, transferred of amount to the account of defendant no.1, granting compensation are all undisputed facts on record and therefore appreciation of such document does not appear to be necessary.

17. It is pertinent to note that, the pivotal prima-facie question revolves around the Will asserted to be forged and illegal. By said Will the testatrix has bequeathed the amount of compensation to which the plaintiff is claiming to have $\frac{1}{2}$ shares. The Will is in favour of defendant no.2 and therefore, she being the propounder under the Will shall have burden to embellish its legality and genuiness. The Will is filed by the plaintiff with list Exh-4 . What this document transpires is that it is registered, at sub-registrar office Dharni, Dist-Amravati and the testatrix appears to have put her thumb impression giving effect to the Will. Furthermore, it reveals that the said Will is attested by two witnesses. At this juncture it is imperative to mention that when prima-facie the Will being registered document has presumptive value. When the Will is registered one putting thumb impression by the testatrix in presence of witnesses gets more probative value. Therefore, prima-facie such being the nature of Will its execution cannot be doubted.

18. What the contents of Will do show is that the testatrix has specifically given the reason of excluding legal heirs of her predeceased daughter i.e plaintiff. What the recitals to that regards shows is that while her husband was alive the share to the heirs of her deceased daughter has been given and the compensation for the already acquired land appears to have been given to the plaintiffs. Furthermore, the Will filed on record reveals that at the time of execution of Will the medical superintendent has issued the certificate in regards to the mental and physical fitness of the testatrix. Such recitals of Will and its due execution being supported by the medical certificate and being registered prima-facie appears to be believable. The

plaintiff to show any illegality of Will have failed prima-facie to show suspicious circumstances on the execution of Will. Moreover, the Will prima-facie being given the explanation as to exclusion of heir and being registered one there appears at this stage no suspicious circumstances surrounding the execution of Will. According to plaintiff the thumb impression appearing on the Will is not of the testatrix. At this juncture it must be observe here that when the document is registered and being having presumptive value prima-facie such contentions appear to be not fruitful for the plaintiff.

19. Here it is pertinent note that the plaintiffs have challenged the Will under the locus that they being the legal heirs of predeceased daughter are having entitled to the $\frac{1}{2}$ share. At this juncture, the nature of suit and relief claimed by the plaintiff requires to be considered. The plaintiffs have only challenged the validity of Will and seeking permanent injunction to restrain the defendant no.1 from withdrawing the amount. It is imperative to mention that when the court considers the prima-facie case the court also requires to determine the right of plaintiff to the property involved in the suit. In this case the plaintiffs have merely challenged the validity of Will and have not sought the relief of right on the basis of which they have claimed the invalidity of the Will. In such circumstances now the question that forms part of consideration is that whether the application and suit of the plaintiff will survive in absence of such relief.

20. To find out the answer of above question the emphasise requires to be given to the pleadings of the plaintiff. Under the pretext of having inheritance right to the amount of compensation the Will in question is assailed. When the right on the basis of which such locus is claimed certainly seeking a further relief of declaration as to entitlement to the extent of their right in the amount of compensation was necessary to claim. In absence of claiming such further relief the very object of determining the Will as null and void would be no use for the plaintiff. What relief the plaintiffs have sought in regards to the amount of compensation is to put the defendant no.1 under restrain order that too permanently. If such

decree of consequential relief would be passed it would be of no use for the plaintiff in absence of main relief of declaration as to their inheritance right or entitlement to the amount. Certainly, in such circumstances the suit of the plaintiff would be failed.

21. The learned counsel for the plaintiff has argued that section 41 (j) of the Act 1963 come into the picture. At this juncture it is pertinent to note that this sub-sections does not at all come in way of the plaintiff. Though the plaintiff has not claimed the declaration as to their entitlement to the amount of compensation, however they being coming as heirs of predeceased daughter asserting their interest to the amount. The personal interest in view of section 41 (j) and not claiming further relief are two independent and different provisions. Henceforth, such argument appears as unsustainable.

22. The leaned counsel for the defendant no.1 argued that as on today the amount in which alleged to be saved is only 280/- and as such the application and suit frustrated. To substantiate this argument, he has filed the statement of account on record. What this document reflects is that on 20.10.2023 amount of Rs 280 is laying in account. The document no.4 filed by plaintiff at list Exh-4 shows that said amount is transferred in the account of defendant no.2 of which the statement has been filed and as on 20.10.2023 the amount of Rs.280/- is standing in said account. When such is a position on record it certainly shows that the amount which is in dispute has been released in favour of the defendant no.1. Resultantly, I am of the considered opinion that the plaintiff has no prima-facie case in their favour and accordingly, I answered all these points in negative.

As to point no.3 :-

23. As the plaintiff being failed to establish prima-facie case the cost of application requires to be borne by the plaintiff.

24. Hence, the following order.

.....ORDER.....

- i. The application is hereby rejected.
- ii. Cost be saddled on the plaintiff.

Sd-

Telhara.

Rahul A Rannaware

Date. 29.12.2023

(Jt. Civil Judge Jun. Div, Telhara)