

MHAU060014152018



R.C.S. No.143/2018
Bharat Vs. Ramban & others

ORDER BELOW EXH.5
(Dt.15.04.2019)

The suit is for partition and perpetual injunction. Plaintiff has filed this application for temporary injunction vide Order 39 Rule 1 of C.P.C. Heard learned advocate Shri V.B. Kale for the plaintiff and learned advocate Shri. G. S. Mene for the defendant No. 1 and learned advocate Shri. M. G. Deshmukh for defendant Nos. 3 and 4.

2. Considering the rival contentions of the parties, following points arise for determination. These points and my findings along with their reasons are as under:-

Sr. No.	POINTS	FINDINGS
1.	Whether plaintiff has <i>prima facie</i> case?	In The Negative.
2.	Whether balance of convenience lies in favour of Plaintiff ?	In The Negative.
3.	Whether Plaintiff will suffer irreparable loss ?	In The Negative.
4.	What order ?	As per final order.

REASONS

AS TO POINT NOS.1 to 3 :-

3. The ld. Advocate for the plaintiff Shri. V. B. Kale submitted that, Suit property is ancestral and Joint Hindu family property of plaintiff and defendants. It is undivided property. Defendant Nos. 1, 3 and 4 in collusion with each other and revenue officer got entered their names on suit property. They have prepared false mutation entries. Defendant No.1 has purchased property No. A-223 at Kannad and defendant No.4 has purchased plot along with her husband at Kannad. Plaintiff relinquished his right in those properties. As the suit properties are undivided joint Hindu family properties plaintiff have 1/8th share. On 08.07.2018 he has demanded separation of his share from defendant Nos.1 to 7 but they flatly refused. Defendant Nos.1, 2 and 3 claimed their ownership over that property and denied rights of plaintiff. It is apprehension in the mind of plaintiff that, defendant Nos. 3 and 4 will create third party interest in the suit property. Hence, he requested to restrain them by issuing temporary injunction till decision of the suit.

4. Learned advocate for defendant No.1 Shri G. S. Mene has submitted that, plaintiff not came in the court with clean hands. Partition of suit property has taken place in the lifetime of father Fakirrao. On 02.05.1986 partition has taken place and 36 R. land Gat No. 377 and 378 allotted to each.

Accordingly, Mutation Entry No. 633 has taken and it was acted upon. Separate shares and property of plaintiff and defendant has mentioned on 7/12 extract. 70 R from Gat No.96 is self acquired property of defendant No.1. He was serving in the Bank and has purchased that property out of retirement funds. He has purchased suit property vide Sale Deed on 28.12.2004. Mutation Entry No. 2845 and 2846 has taken place. At present defendant No.1 got huge amount of compensation in road acquisition. Therefore, plaintiff has filed this false suit to grab money from the defendants. Hence, he requested to reject the application.

5. Learned advocate for defendant Nos. 3 and 4 has submitted that, partition of suit property has taken place on 02.05.1986 in lifetime of father Fakirrao. In that partition plaintiff got total 36 R. land in Gat No. 377 and 378. He has alienated said land to defendant Nos. 3 and 4 by way registered Sale Deed. Defendant Nos.3 and 4 have purchased property of the share of defendant No.6. Defendant No.3 was serving as teacher and defendant No.4 was also in government service. They both have purchased share of defendant Nos. 4, 6 and 3. Now, plaintiff have no right to claim share in suit property. He has not challenged any Sale Deed executed in favour of these defendants. Plaintiff has filed this false suit only with intention to grab money from these defendants, because they are receiving huge amount in compensation of land acquisition. In

such situation he requested to reject the application.

6. On the background of rival contentions of the parties I have carefully gone through the pleadings and documents on record. Relationship between plaintiff and defendants not in dispute. It is also admitted that, the suit property Gat No.106 previously known as Gat No.477 and Gat No.107 previously known as Gat No.478. It is also not disputed that, both these lands were ancestral and Joint Hindu family property. Plaintiff's contention is, suit property is still undivided and he has share in the same. On the contrary, according to defendant Nos. 1, 3 and 4 partition of suit property has taken place in the year 1985, that too in the lifetime of father Fakirrao. On this background documents on record are important piece of evidence for the consideration of prima facia case. It is expected that, the plaintiff should prove his prima-facie case by way of affidavits and documents.

7. Mutation Entry No.633 at Exh.31/1 shows that, father of plaintiff Fakirrao Gosavi had partitioned his property Gat No.377 and 378 on 02.05.1986. In that partition Ashok (Def. No.3) got 36 R. in Gat No. 378. Devban (Def No.6) got 36 R. in Gat No.377. Bharat (pff.) got 16 R. in Gat No. 377 and 20 R. in Gat No.378 and their mother Kesarbai got 17 R. in Gat No.377 and 19 R. in Gat No.378. This mutation entry clearly shows that, plaintiff along with his brother defendant Nos.3, 6

and mother Kesarbai got 36 R land each as share in partition. There is no record, nor it is contention of the plaintiff that, said mutation entry is bogus. It is not challenged by plaintiff till today. This mutation entry clearly shows, that partition of suit property Gat No.377 and 378 (New Gat No.106 and 107) has taken place on 02.05.1986.

8. Mutation Entry No. 793 (Exh.31/3) and Sale Deed dated 18.07.1988 (Exh.31/8) shows that, Kashibai (defendant No.4) has purchased share of plaintiff i.e. 36 R. land in Gat No.377 and 378. Mutation Entry No. 936 (Exh.31/2) and Sale Deed dated 13.05.1991 (Exh.31/12) shows that, plaintiff No.1 Ashok has purchased share of his mother Kesarbai i.e. 36 R. land in Gat No.377 and 378. These two Sale Deeds clearly shows that, plaintiff has alienated his share in suit property to defendant No.4 and Kesarbai has alienated her share to defendant No.3. These Sale Deeds have not challenged by the plaintiff nor the mutation entries are challenged. On the contrary, plaintiff suppressed this fact from the court. Those documents are registered Sale Deeds and has taken place long back in the year 1988 and 1991.

9. Documents at List (Exh.31) further shows that, defendant No.3 has alienated his share i.e. 36 R. land from Gat No.377 to various person. He has alienated 4 R. to defendant No.4 vide registered Sale Deed dated 06.08.1996. Thereafter,

24 R. to defendant No.4 vide registered Sale Deed dated 31.03.2000 out of remaining portion he has alienated 2.5 R. land to each one Mr. Yelaskar and Miss. Gayabai and also alienated to defendant No.4. Thereafter, defendant No.4 has purchased 2.5 R from Mr. Yelaskar on 04.12.1999 and 2.5 R from Miss. Gayabai on 22.05.2000. By this way 36 R. land which is share of defendant No.6 in Gat No.377 purchased by defendant No.4. It is not disputed that, the defendant Nos.3 and 4 both are in government service. Therefore, prima-facie it appears that, they have purchased property out of their separate income.

10. Documents filed by defendant No.1 at Exh.33 shows that, he has purchased 70 R. land from Gat No.96 vide registered Sale Deed dated 28.12.2004. Mutation Entry No.2846 and 2845 taken place on 20.02.2005. It is contention of defendant No.1 that, he was serving in Bank and has purchased said property after retirement out of retirement funds. Surprisingly, plaintiff has not challenged this mutation entry. On the contrary, he came with the court that suppression of facts. Documents on record prima-facie show that, property Gat No.377 and 378 in view of Gat No.106 and 107 were joint family property of plaintiff and defendants. Partition of that property has taken place in the lifetime of Fakirrao on 02.05.1986. Thereafter, plaintiff, defendant No.6, their mother Kesarbai has alienated property their share to defendant No.3

and 4. Prima-facie it appears that, plaintiff have no rights in the suit property.

11. It further appears that, the plaintiff not came in the court with clean hands. He has suppressed lots of factual conditions regarding registered Sale Deeds between him and defendant No.4 and other documents. It is not situation that, said Sale Deeds and mutation entries have taken place in recent period. On the contrary, those documents are very old and registered one. However, plaintiff intentionally suppressed this fact. It appears that, the suit property is adjacent to the Solapur-Dhule national highway and some part of the land has acquired by the government. The defendant Nos.3 and 4 will be compensated with huge amount. Keeping eyes on amount, plaintiff has filed this suit with malafide intention. In my considered veiw plaintiff have no prima facia case and Balance of convenience. In such situation if the application is granted it will cause irreparable loss to the defendants. In the result, point no 1 to 3 answered in the Negative. To answer point no 4, I proceed to pass following order.

ORDER

1. Application is reject.
2. Cost on applicant.

Sd/-

(B.R. Thakur)

Date:- 15.04.2019.

Jt Civil Judge Junior Division,
Kannad

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word as per the original Order.

Name of the Stenographer : A.V. Chopade,
Court : Jt. C.J.J.D. & JMFC, Kannad.
Date : 15.04.2019,
Order signed by the
presiding officer on : 17.04.2019,
Order uploaded on : 17.04.2019.

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