

MHAU100000342023



R.C.S./6/2023

Bhagitrabai Suryabhan Take Vs. Bhanudas Mhatarji Aute

ORDER BELLOW EXH.05

The plaintiffs have filed application under order 39 rule 1 and 2 of C.P.C. for temporary injunction, of the property bearing gut no.119, situated at Lamangaon, Tq. Khultabad, Dist. Aurangabad. Further gut no.120 admeasuring 90-R and gut no.121 admeasuring 1-H. 20-R (Hereinafter called as 'suit properties') against defendants.

02. It is contended by the plaintiffs that the suit properties are ancestral property of plaintiffs. The old survey no.35/5 is gut no.119, the old survey no.35/6 is gut no.120 and old survey no.35/7 is gut no.121. The suit properties initially owned and possessed by father of plaintiff no.1 to 4 Fakira Bhika Aute. After the death of Fakira Bhika, the suit properties are transferred in the name of the mother of the plaintiff no. 1 to 4 Bhikabai Fakira Aute was transferred as per mutation no. 132 on 11.09.1973.

03. It is further contended that plaintiffs are the heirs of Bhikabai Fakira Aute. During the life time of Bhikabai the suit properties are never transferred to anyone. In the year 1952 consolidation Scheme was implemented and at that time defendants illegally, the land 96-R transferred from gut no.119 in the name of defendant no.5 by converting survey no.35/5 into gut no.119. Further, survey no.35/6 converted into gut no.120 and 90-R land transferred to the defendant no.1. Further, survey no.35/7 converted into gut no.121 and transferred in the name of defendant no.2.

04. It is further contended by plaintiffs that the defendant no.5 without notice to the plaintiffs transferred land illegally to the defendant no.4. Further, the defendant no.1 by way of sale-deed the land in gut no.120 illegally transferred admeasuring 90-R land in the name of defendant no.5. The defendant no.5 transferred the said land to defendant no.4. The defendant no.2 illegally transferred 1-H, 12-R land in gut no.121 by way of sale-deed on 01.03.1996 to defendant no.4 and the defendant no.4 illegally by way of partition transferred said land to defendant no.3.

05. It is further contended by plaintiffs that the mother of plaintiffs has given suit property to the defendants for cultivation on rent. The defendants have no concerned with the suit properties. But when the plaintiffs get 7/12 extract of suit properties, then they came to know that the defendants name also mentioned in the column of owner over the 7/12 extract. The defendants are trying to alienate the suit property. Therefore, prayed to allow the application.

06. Per contra, defendants have filed their say and opposed the application. It is contended that the consolidation scheme was implemented in the year 1976-1977 and at that time as per the possession, the scheme is implemented. The name of defendants are recorded as per the said scheme and the said scheme is not challenged by the plaintiffs. Until the plaintiffs correct the said scheme, the plaintiffs cannot adjudicate the suit. The defendants are having possession over the suit property since 48 years. The suit is not filed within the limitation. The defendants have by way of registered sale-deed some part of suit properties are sold to defendants. Therefore, the application is liable to be rejected.

07. From the above pleading and contention of both the respective parties following points have been framed, along with my findings with reason are as follows:

Points of determination

Sr. No.	Points	Findings
1.	Whether plaintiff has prima-facie case against defendants ?	Yes.
2.	Whether balance of convenience lies in favour of plaintiff?	Yes.
3	Whether plaintiff would put to suffer irreparable loss, if injunction as sought by her is not granted ?	Yes.
4	What order ?	Application is allowed.

08. The plaintiffs to prove their contention have filed on record copy of 7/12 extract survey no.35/5, copy of 7/12 extract survey no.35/6, copy of 7/12 extract survey no.35/7, copy of mutation entry no.132, copy of gut statement dated 20.09.2021, copy of gut statement dated 29.09.2021, copy of 7/12 extract gut no.119, copy of 7/12 extract gut no.120, copy of 7/12 extract gut no. 121, mutation entry no.186, mutation entry no. 352.

09. On the contrary, defendants have filed on record copy 7/12 extract of land gut no.119, copy 7/12 extract of land gut no.120, copy 7/12 extract of land gut no.121, copy of registered sale-deed No.607/1995 40-R land of gut no.121, copy of registered sale-deed

No. 310/1996 of 44-R land of gut no.121, copy of registered sale No.311/1996 of 12-R land of gut no.121, copy of registered sale No.350/1997 of 16-R land of gut no.121, copy of registered sale No.667/2000 of 90-R land of gut no.120, copy of Ferfar No.186 of gut no.120 and copy of Ferfar No. 352 of gut no. 119,120, 121 and other gut.

REASONS

AS TO POINTS NO. 1 to 3 :-

10. All three points are interlinked with each other hence, all are taken for discussion together.

11. Considering the relief sought by the plaintiff, it is an appropriate to refer Order-XXXIX, Rule-1 of Civil Procedure Code 1908.

12. Order-XXXIX, Rule 1 of C.P.C. in which cases temporary injunction may be granted- where in any suit it is proved by affidavit or otherwise -

- a) That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- b) That the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,
- c) That the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

13. The Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale removal or

disposition of the property [or dispossession of the plaintiffs, or otherwise causing injury to the plaintiffs in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

14. After going through the aforesaid provision, in the light of facts and circumstances involved in the case at hand, it is pertinent to mention that Order-XXXIX, Rule-1 (c) of C.P.C. is applicable, wherein, plaintiffs are supposed to prove or bring prima facie material on record in accordance with Order-XXXIX, Rule-1(c) of C.P.C, in order to show his possession. It is thus, after considering every provision of Order-XXXIX, Rule-1 (c) of C.P.C. it is binding on the plaintiffs to prove his prima facie possession over the suit land.

15. Perused the say and record of the case. Heard respective parties. The plaintiffs have filed the suit for declaration and perpetual injunction against defendants. It is the contention of plaintiffs that suit property is ancestral property of plaintiffs. During the implementation of consolidation scheme the defendants illegally converted survey no.35/5 into gut no.119 in the name of defendant no.5 Rangnath Laxman Malode, survey no.35/6 into gut no.120 in the name of defendant no.1 Bhanudas Mhatarji Aute and survey no.35/7 into gut no.121 in the name of defendant no.2 Subhash Bhimrao Aute. The defendants are trying to alienate the suit properties.

16. The plaintiffs to prove their contention have filed on record a copy of 7/12 extract of survey no.35/5, 35/6 and 35/7. From perusal of these copies of 7/12 extract, it shows that it is in the name of Bhikabai Fakira. Further, the plaintiffs have filed copy of mutation entry no.132. From perusal of it shows that after the death of Fakira

the suit propertis are transferred in the name of Bhikabai.

17. Per contra, defendants contended that the consolidation scheme was implemented in the year 1976-1977 and at that time as per the possession, the scheme is implemented. The name of defendants are recorded as per the said scheme and the said scheme is not challenged by the plaintiffs. Until the plaintiffs correct the said scheme till then the plaintiffs cannot adjudicate the suit. The defendants are having possession over the suit property since 48 years.

18. The defendants to prove their contention have filed on record the copy of 7/12 extract of gut no. 119, 120, 121 and also copies of sale-deeds on record.

19. It is not in dispute that the Government has implemented the consolidation scheme. Further the defendants have not denied that plaintiffs are the heirs of deceased Fakira. The plaintiffs filed the documents of copy of sale-deed, copy of 7/12 extract and copy of mutation entry of suit properties before implementation of consolidation scheme. From perusal of these documents prima-facie it shows that the suit properties are belongs to plaintiffs. Per contra, defendants have filed copy of 7/12 extract and copy of sale-deeds after implementation of consolidation scheme. It prima-facie appears that the right of plaintiffs are involved in the suit property.

20. Learned advocate of the defendants argued that the plaintiffs have not challenged the consolidation scheme within prescribed period. Further, since 48 years they have been in possession over the suit property. The defendants are bonafide

purchaser and they have developed the property. In such circumstances the application is liable to be rejected. To support his contention he relied upon the decision of Hon'ble Bombay High Court in *Limbraj Waman Yede Vs. Sate of Maharashtra & others* and in similiar decision of the Bombay High Court in *Gulabrao Bhaurao Kakade)Smt) since deceased by him heirs and legal representatives Vs. Nivrutti Krishna Bhilare & Others*. Wherein the Hon'ble Bombay High Court held that action of the respondent were illegal and beyond their jurisdiction, leading to the quashing of impugned order. I have gone through the above decision of Hon'ble High Court. Wherein the scheme of consolidation is challenged. However, in the present suit the plaintiffs have not challenged said scheme. Therefore, these citations are not applicable in the present suit.

21. It is discussed that the plaintiffs have prima-facie shown their right over the suit properties. Thus, the balance of convenience lies in favour of plaintiffs. The irreparable loss will cause to the plaintiffs compared to defendants. The contention of the defendants require further adjudication. Therefore, I answered to point no 1 to 3 in the affirmative. Hence considering all the facts and circumstances of the suit I pass following order.

ORDER

- 1) The application is allowed.
- 2) The defendants are directed not to alienate the suit properties until disposed of this suit.

Date- 28/03/2026.

(G. D. Gurnule)
Jt. Civil Judge Jr. Div.
Khultabad.