

MHAU120005892018



R.C.S. No. - 59/2018.
Sandu Vs. Rangnath.

ORDER BELOW EXH. 5

This is an application filed by applicant Under Order 39 Rule of I and II of Civil Procedure Code for seeking order of temporary injunction.

2. In short it is contentions of the applicant that, agricultural property in Gut No. 140, admeasuring about 9 H 78 R out of which 1 H agricultural land bounded by Towards East - Land of Ramdas Rathod, Towards West - Land of Dhanraj Pandu, Towards North - Nala and Land of Rajdas Rathod, Towards South - Land of Devchand Lala situated at Jangala-Tanda, Tq.Soygaon, Dist. Aurangabad (In short above mentioned property will be called as “suit property” for the sake of brevity), is the joint family property of plaintiff and defendants.

3. It is contended by the plaintiff that, suit property is purchased in the name of defendant No. 1 from the income of joint family property of plaintiff and defendants. Therefore, he is having share in the suit property, defendant No. 2 to 4 having no grievance

about share in the suit property. However, defendant No. 1 refuse to give 50 R land to the plaintiff out of suit property as his share. Therefore, plaintiff constrained to filed suit for partition and for perpetual injunction, interalia plaintiff has filed this application for temporary injunction for not causing obstruction to the peaceful possession of plaintiff over the west side 50 R land out of suit property. He further contended that, he has prima facie case, balance of convenience in his favour and if injunction is not granted irreparable loss will be caused to the plaintiff only. Hence, prayed for allow the application.

4. Defendant No. 2 to 4 filed on record their written statement at Exh. 10 and admitted the claim of plaintiff. Defendant No. 1 filed on record his written statement cum written reply at Exh. 11, he has denied all the adverse contentions of the plaintiff and come with the case that, suit property is his self acquired property. He further contended that, he had filed a Regular Civil Suit No. 38/2015 for perpetual injunction against the plaintiff, said suit was decreed by this Court. Therefore, suit property is not in possession of the plaintiff, hence suit of plaintiff is not maintainable. Therefore, prayed for reject the application with cost.

5. After considering the submission and perusal of record following points arise for my determination and I have recorded my

findings on those points with reasons as follows:-

<u>Sr.No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaintiff has prima facie case is in his favour ?	<u>..No.</u>
2.	Whether the balance of convenience lies in favour of the plaintiff ?	<u>..No.</u>
3.	Whether plaintiff will suffer irreparable loss if injunction is not granted in his favour ?	<u>..No.</u>
4.	What order ?	<u>As per final order.</u>

FINDINGS AND REASONS

6. In support of the case of the plaintiff, plaintiff filed on record 7/12 extract of suit property. 7/12 extract of Gut No. 213 & 214 consent partition sheet dated 24/12/2014 & 20/12/2014 and mutation entry in respect of Gut No. 213 & 214, defendant filed on record xerox copy of certified copy of judgment passed in RCS No. 38/2015.

As to Point No. 1 :-

7. Heard Ld. counsel for the both parties peruse the record as per case of plaintiff, suit property is joint family property of plaintiff and defendants and he is possession of 50 R land out of suit property. As per the case of defendant No. 1 suit property is the self acquired property.

8. Both parties filed on record evidence in support of their contentions. On perusal of the 7/12 extract filed by the plaintiff of suit property. It shows that, name of the defendant No. 1 mentioned as owner and possessor of the suit property. Moreover, on perusal of the certified copy of judgment passed in RCS No. 38/2015 which shows that, this Court has held the possession of plaintiff over the suit property as a owner. From the above mentioned documentary evidence, it shows that defendant is owner and possessor of the suit property. Partition sheet dated 24/12/2014 is not relevant with the suit property because it is in respect of Gut No. 214, which is not subject matter of this suit. Partition sheet dated 26/12/2014 cannot be considered at this stage, inview of the judgment passed in RCS No. 38/2015. Plaintiff not filed on record any kind of evidence to make the contentions of the defendant improbable. Therefore, considering the 7/12 extract filed by plaintiff and xerox copy of certified copy of judgment passed in RCS No. 38/2015. I come to the conclusion that, contentions of the plaintiff not seems to be probable one.

9. On the contrary contentions of the defendants seems to be probable one. Therefore, considering all these circumstances, I come to the conclusion that, plaintiff failed to prove Point No. 1. Hence, I answer Point No. 1 in negative.

As to Point No. 2 & 3:-

10. As plaintiff failed to prove his possession over the suit property, therefore balance of convenience is also not favour of plaintiff and if injunction is not granted no irreparable loss will be caused to the plaintiff as he is not in possession of the suit property. Therefore, I answer Point No. 2 & 3 in negative.

As to Point No. 4:-

11. Plaintiff failed to prove Point No. 1 to 3, therefore he is not entitled for temporary injunction as prayed. Hence, in the answer of Point No. 4, I pass following order:-

ORDER

1. Application is rejected.

Dt. - 08/11/2019.

**(S.S.Salwe)
Civil Judge, (Jr.Dn.),
Soygaon.**

CERTIFICATE

I affirm that the contents of this PDF file Order are same word to word, as per the original Order.

Name of the Stenographer :- K. P. Dusane.

Court :- C.J.J.D. & J.M.F.C., Soygaon.

Date :- 08/11/2019.

Order Signed by the presiding officer on :- 11/11/2019.

Order uploaded on :- 11/11/2019.