

Regular Civil Suit No.34/2013

ORDER BELOW EXHIBIT 5

01. The present suit is instituted for partition and separate possession of the suit properties. The plaintiffs made an application at Exhibit 5 for restraining the defendants from alienating the suit properties and from creating third party interest over the suit properties.

DISCRIPTION OF THE SUIT PROPERTIES :

02. Gat No.23 admeasuring area 1 Hector 42 Are and Gat No.91 admeasuring area 3 Hector 1 Are situated within the limits of village Deola, Taluka – Ambajogai. Gat No.293 admeasuring are 2 Hector 12 Are situated within the limits of village Kumbephal, Taluka- Ambajogai. (Hereinafter referred as ' the suit properties ').

CASE OF THE PLAINTIFFS :

03. The plaintiffs are real sisters inter se and of Baburao (husband of defendant No. 1) and defendant No.2. Baburao and defendant No.2 are real brothers inter se and of the plaintiffs. Defendant No.3 is son-in-law of defendant No.1.

04. According to the plaintiffs, the suit properties are ancestral properties of the plaintiffs and the defendants' family. The original person of the plaintiffs' and Baburao and defendant No.2 is Tuljiram Tukaram Coure. He died in the year 1984. The deceased Tuljiram had purchased Gat No.293 admeasuring area 2 Hector 73 Are situated at village Kumbhefal vide registered sale deed No.2411/1975 on 04/06/1975 in the name of the deceased Baburao and defendant No.2. At the time of execution of said sale deed

Baburao and defendant No.2 both were minor. The consideration amount was paid by the deceased Tuljiram. The name the deceased Baburao and defendant No.2 were registered to Gat No.293 under guardianship of the deceased Tuljiram. After death of Tuljiram vide mutation entry No.269 the name of Dropadabai (wife of Tuljiram) registered to the Gat No.293. Thereafter, vide mutation entry No.533 and 899 the name defendant No.1 and 2 were registered to Gat No. 293.

05. Dropadabai died in the year 2013 due to cancer Defendant No.2 sold 1 R land out of land Gat No.293 to Ramdas Manikrao Ingole. According to the plaintiffs, defendant No.2 has no right to sale 1 R land to the Ramdas Manikrao Ingole.

06. Defendant No.1 sold 1 Hector 25 R land out of Gat No. 91 situated at village Deola Tq. Ambajogai to defendant No.3 on 01/01/2013 vide registered sale deed No.23/2013. According to the plaintiffs, the said sale deed is binding upon the shares of the plaintiffs in the suit properties. They have approached to the defendants on 10/01/2013 and asked for partition of the suit properties. Defendant Nos.1 and 2 denied their share and partition. Hence, the plaintiffs instituted the present suit. The plaintiffs have apprehension that defendant Nos.1 and 2 will sale the suit properties The part alienation of the suit properties has taken place. Hence, the plaintiffs prayed for the defendants are restrained from alienating and from creating third party interest over the suit properties.

CASE OF DEFENDANT NO. 1 :

07. Defendant No.1 has filed her written statement at Exhibit 40 she filed pursis at Exhibit 48 and stated that the written statement shall be considered as say on Exhibit 5. Defendant No.1

denied the contentions made in the application. According to defendant No.1, the old Survey No.37 admeasuring area 16 Hector 12 Are situated at Deola Tq. Ambajogai was owned by Ramlal Kanhaiyala. He sold the said land to Tuljiram, Parasram and Gangaram after taking permission of the Collector. Tuljiram, Parasram and Gangaram filed R.C.S. No. 95/1956. The said suit was decreed on 04/08/1957 and Tuljiram has got 8 Aane share, Prasram has got 2 Aane share and Gangaram has got 6 Aane share. During the consolidation and fragmentation scheme the old Survey No.37 was named at Gat No.91. In the year 1986, the name of Tuljiram registered to the Gat No. 91 as owner in possession admeasuring area 3 Hector 1 R.

08. Gat No.23 was purchased by Tuljiram. Survey No.83 situated at Kumbhefal was purchased by Tuljiram in the name of Baburao and defendant No.2 vide sale deed No.2411/1975 dated 04/06/1975. From the date of sale deed Baburao and defendant No. 2 are owner in possession of Survey No.293. Tuljiram died on 18/10/1984. Vide mutation entry No.269, the name of Dropadabai registered to the suit properties. However, as a son of Tuljiram. Baburao possessing Gat No.91 and defendant No.2 possessing Gat No.23 as per partition taken place. Further more, Dropadabai executed partition deed on 28/01/2003. The name of defendant No. 1 registered to Gat No.91 and name of defendant No.2 registered to Gat No.23 vide mutation entry No.533. The said mutation entries and consent deed are not challenged by any one till today. After death of Baburao, vide mutation entry No.899, the name of defendant No.2 registered to Gat No.293 admeasuring area 1 Hector 42 Are on 23/02/2003. Defendant No.2 is owner in possession of Gat No.293 admeasuring area 2 Hector 82 Are. Gat No.91 admeasuring area 3

Hector 2 Are is owned and possessed by defendant No.1 from 09/11/1991.

09. Defendant No.1 executed sale deed of 1 Hector 25 R out of Gat No.91 by registered sale deed No.23/2013 on 08/01/2013 in the name of defendant No. 3. House No.156 was is name of Tuljiram. At the time of partition, the said house is given to the share of Baburao. After death of Baburao defendant No.1 is owner in possession of the said house. According to defendant No.1, after death of Tuljiram within one year partition of the suit properties has taken place between Baburao and defendant No.2 and they are in possession of their respective shares. The said suit is not within limitation. The all joint family properties are not brought in common hotch pot. Hence, this suit and the application at Exhibit 5 is not tenable. Hence, prayed for rejection of the application.

CASE OF DEFENDANT NO.2 :

10. Defendant No.2 filed his say and written statement at Exhibit 42. He denied all the contentions made in the application at Exhibit 5. According to defendant No.2, the plaintiffs got married before more than 30 years. They are having children. They are residing along with their family at their matrimonial house. There marriage was solemnized before July 1994. Hence, they have no right to ask for partition in the suit properties. With the consent of Dropadabai, the plaintiffs, Baburao and defendant No.2 the partition of the suit properties, ancestral properties and joint family properties has taken place in the year 2003. Vide mutation entry No.533 and 899 were executed with consent of plaintiffs. Husband of defendant No.2 has given consent to said partition. The partition deed was executed in presence of witnesses. From the year 2003 the plaintiffs

have not objected to the partition. Now, on the instigation of Sudhakar Khande Hede the plaintiffs filed this suit. Hence, prayed for rejection of the application at Exhibit 5.

THE CASE OF DEFENDANT NO. 3 :

11. Defendant No.3 filed his written statement and say at Exhibit No.72. The say of defendant No.3 is same as filed by defendant No.1.

12. Heard the learned advocate for the plaintiffs and the defendants. The points for my determination along with findings thereon are as under:

POINTS FOR DETERMINATION

POINTS	FINDINGS
1.Whether the plaintiffs prove that they have prima facie case?	YES
2.Whether the plaintiffs prove that balance of convenience lies in their favour?	YES
3.Whether the plaintiffs prove that they will suffer irreparable loss if injunction is not granted?	YES
4.What order?	As per final order

REASONS

ADMITTED FACTS:

13. The relation is admitted to both parties. Tuljiram had purchased Gat No.293 in the name of the deceased Baburao and

defendant No.2. The status of the suit properties is not disputed by the parties.

AS TO ISSUE NO.1:

14. The relation is admitted to the parties. Tuljiram died in the year 1984. The plaintiffs and the defendants are not come with the case that in lifetime of Tuljiram, the partition of the suit properties has taken place. It means, before death of Tuljiram partition of the joint family and ancestral properties has not taken place. Gat No.293 purchased by Tuljiram in the name of Baburao and defendant No.2. At the time of said sale deed Baburao and defendant No.2 were minor. The consideration amount of the said sale deed was paid by Tuljiram. Gat No.293 is joint family property after death of Tuljiram. Gat No.23 and 91 also ancestral properties of the plaintiffs' and the defendants' family. The defendants have not contended that the Gat No.293,23 and 91 are their self acquired properties.

15. The defendants came with the case that the suit properties are partitioned after death of Tuljiram within one year. The fact that the partition has taken place no document brought on record. If we presume that partition has taken place after death of Tuljiram then the notional partition should have been taken place and the plaintiffs might have got share in Tuljiram's share. However, the defendants have not stated that the plaintiffs released their right in the suit properties at the time of partition. Dropadabai died after death of Tuljiram. If partition of the suit properties has taken place then Dropadabai might have got share in the suit properties. Further more, after death of Dropadabai, the plaintiffs, Baburao and defendant No.2 have share in the separate property which were received to Dropadabai at the time of partition.

16. On the contrary, sufficient prima facie evidence has not brought on record to show that partition of the suit properties has taken place. The relation is admitted to the parties. It is prima facie seems that the plaintiffs have share in the suit properties. Whether partition of the suit properties is taken place or not it will be decided after evidence and at the time of final hearing of the suit. If the defendants sale the suit properties then the plaintiffs' right in the suit properties will be violated. Hence, the right of the plaintiffs needs to be protected. The plaintiffs have apprehension that the defendants are going to sale the suit properties. Such apprehension is considerable because defendant Nos.1 and 2 have sold some land out of suit properties. Hence, the rights of the plaintiffs needs to be protected. Here the plaintiffs are succeeded to prove their prima facie case. Hence, I answer point No.1 in affirmative.

AS TO POINT NO.2 :

17. While considering the balance of convenience, it is necessary to see whose right is greater than others. The suit properties are joint family properties of the plaintiffs' and the defendants' family. The plaintiffs have share in the suit properties. If the right of plaintiffs will not be protected then the plaintiffs will suffer loss which will not compensated in the form of money. On the contrary, the defendants are in possession of the suit properties and they are enjoying the suit properties. Hence, if the injunction is granted then the defendants will not suffer any loss. In such circumstances, the balance of convenience lies in favour of the plaintiffs. Hence, I answer point No.2 in affirmative.

AS TO POINT NO.3:

18. If the injunction is granted then it will protect the rights

of the plaintiffs. It is necessary to protect their rights till the final decision of the suit. The defendants will not suffer any irreparable loss if the injunction is granted. Hence, I answer to point No.3 in affirmative.

AS TO POINT NO.4:

19. As per finding recorded to the above three points, the plaintiffs is succeeded to prove three principles of the temporary injunction in their favour. They have a prima facie case. Balance of convenience lies in favour of the plaintiffs. If the Court do not grant the temporary injunction then the plaintiffs will suffer irreparable loss. In the result, I pass the following order:

ORDER

1. The application of the plaintiffs at Exhibit 5 is allowed.
2. The defendants are restrained from making alienation of the suit properties and from creating any third party interest over the suit properties till the final decision of the suit.
3. Costs in cause.

Place : Ambajogai.

Date : 05.10.2015

Sd/-

(Rupali D. Sidanale)
3rd Joint Civil Judge Junior Division,
Ambajogai.