

RCS No. 34/2022**Kalpana Naval Marathe
V/s.
Yogita Aadhar Marathe****ORDER ON EXH 5**

This is an application filed by the plaintiff under O.39 R.1 and 2 of the Civil Procedure Code, 1908, praying for grant of temporary injunction against the defendants no. 1 and 2.

02] Heard the learned advocate Shri. B.Z. Marathe for the plaintiff and learned advocate Shri. S.R. Patil for defendants no.1 and 2. Perused the application and say filed in reply (Exh.12). Perused record of the case.

03] This is a suit for perpetual injunction. The landed property situated at village Patan, Tal. Shindkheda Dist. Dhule bearing block no. 23/1 admeasuring 2 H- 04 R is hereinafter referred as suit property for the purpose of this application.

4] Stated in brief, the case of the plaintiff is that she is the owner and in possession of the suit property. The suit property was originally owned and possessed by plaintiff's and defendant no.1's father in law Lotan Shravan Marathe. Thereafter, on 01/09/1980 Lotan Shravan Marathe transferred the suit property in the name of his wife and mother in law of the plaintiff and defendant no.1, Shantabai Lotan Marathe. As a result of which her name was mutated in the record of rights of suit property vide mutation entry no. 529. Since 01/09/1980 Shantabai Lotan Marathe was the absolute owner of the suit

property. Thereafter, on 29/03/2022 Shantabai Lotan Marathe by executing an affidavit regarding mutual partition before the executive magistrate transferred the suit property to the plaintiff and vide revenue proceedings order no. 125/2022 of the executive magistrate plaintiff's name was entered in revenue records of the suit property vide mutation entry no. 3364. Since then the plaintiff has become absolute owner of the suit property and she is in exclusive possession of it.

5] It is alleged by the plaintiff that on 30/05/2022 the plaintiff and her husband were doing agricultural work in the suit property. At that time defendants no. 1 and 2 entered there and threatened the plaintiff asking her not to enter the suit property again, otherwise they would kill her. The plaintiff on the same day filed a complaint with Sindkheda police station but no action had been taken by the police. It is further submitted by the plaintiff that defendants have no interest or right over the suit property. Defendant no. 2's father Adhar Lotan Marathe was already given another land block no. 147/1 by partition. Hence, defendants have no concern with the suit property. However, defendants are threatening the plaintiff to forcefully acquire the suit property and are interfering with her peaceful possession over it. Hence, she was constrained to institute the present suit and instant application.

06] It is submitted by the plaintiff that she has a prima facie case in her favour. The balance of convenience is in her favour. She would suffer an irreparable loss if the relief of temporary injunction, as prayed, is not granted in her favour because suit land no.1 is the only source of income for her. The decision of the main suit would require time and hence, the plaintiff prays that by an order of temporary injunction defendants no. 1 and 2 may be restrained

from causing obstruction to or interference with her peaceful possession over the suit property.

07] The defendants have filed their say to the present application at Exh 12. It is the case of the defendants that the suit property is the ancestral property of Lotan Shravan Marathe and he used to cultivate it during his lifetime. After the death of Lotan Shravan Marathe, his first wife Shantabai, second wife Mathurabai and defendant no.1 were cultivating the suit property. Plaintiff has no interest over the suit property and she was never in possession of it. Lotan Shravan Marathe had nominally transferred the suit property in the name of Shantabai for her being a woman, merely for the purpose of getting benefit of governmental schemes. However, as the suit property is ancestral property Lotan Shravan Marathe had no right to transfer it solely in the name of Shantabai. Also, the suit property was never in the exclusive possession of Shantabai. Therefore, the mutation entry through which the name of Shantabai was entered into the record of rights is itself illegal and has no effect. According to the defendants Shantabai was not the owner of the suit property.

8] It is alleged by the defendants that, plaintiff and her husband in collusion with Tehsildar, Sindkheda has fraudulently executed an affidavit of Shantabai and has illegally entered the name of plaintiff to the record of rights in respect of the suit property vide mutation entry no. 3364. The mutation entry no. 3364 being illegal has been set aside by the sub-divisional officer on 31/01/2023 in RTC Appeal no. 66/2022 and the name of Shantabai Lotan Marathe has been re- entered in record of rights. Thus, as a result of setting aside fraudulent mutation entry the plaintiff has no title over the suit property

and she was never in possession of the suit property. In fact, defendants are in possession of the suit property. The plaintiff has no prima facie case in her favour as she is not in possession of suit property. In case a temporary injunction is granted as prayed, defendants would suffer an irreparable loss. The balance of convenience is thus in their favour. Hence, it is prayed that the application may be rejected.

8] The points for determination along with my findings thereon and reasons for the same are as follows :-

Sr. No	Points	Findings
I	Whether the plaintiff has a prima facie case in his favour ?	No
II	Whether the plaintiff would suffer irreparable injury if injunction as prayed is not granted ?	No
III	Whether the balance of convenience is in favour of the plaintiff ?	No
IV	What Order?	The application is rejected.

REASONS

As to the point no.(i) :-

09] The plaintiff has brought on record certified copy 7/12 extract of block no. 23/1(Exh 3/1), M.E no. 3364 in respect of block no. 23/1 (Exh 3/2), M.E no. 529 (Exh 3/1), copy of complaint made to Sindkheda police station (Exh 3/ 4), photocopy of four boundaries of block no.23/1 (Exh 3/ 5), 7/12

extracts of block no. 23/1 for the period of 1975 to 2023 (Exh 17/1 to 17/6), M.E no. 3410 (Exh 17/7), Affidavit executed by Shantabai Lotan Marathe (Exh 17/8), 8A extract for account no. 1733 (Exh 17/9), 7/12 extract of block no. 23/1 for the period of 2020 to 2023 (Exh 17/10), revenue receipt for account number 1733 (Exh 20/1), 7/12 extract of survey no. 10 from 1960-1970 (Exh 22/1), M.E no. 456 (Exh 22/2), photocopy of death certificate of Shantabai Lotan Marathe (Exh 22/3), 7/12 extract of block no. 147/1 (Exh 26/4), Notice from collector office, Dhule (Exh 22/5), Tax receipts (Exh 30/1). The defendants have brought on record copy RTS appeal no. 66/2023 (Exh 24/1), bill of seeds & fertilizers (Exh 24/2), copy of judgments in RTS appeal no. 66/2022, 7/12 extract of block no.23/1 of 02/12/2023, M.E no. 3557, 8A extract of account no. 1840, 7/12 extract of block nos. 147/1 and 147/2 (Exh 32/1 and 2), M.E no. 3027 (Exh 32/3).

10] The suit is for perpetual injunction. Both the parties claim to be in possession of the suit property. In support of her claim, the plaintiff has produced on record a certified copy of mutation entry no. 456 (Exh 22/2). The said M.E shows that on 15/11/1978 Lotan Shravan Marathe had purchased the suit property from Ganpat Arjun Chaudhari for the consideration of Rs. 3100/- and therefore, his name is mutated on the record of rights over the suit property. Thus, from the above mentioned mutation entry, it appears that Lotan Shravan Marathe had purchased the suit property and prima facie it appears that it was a self acquired property of him.

11] A perusal of certified copy of mutation entry no. 529 (Exh 3/3) shows that on 01/09/1980 Lotan Shravan Marathe had transferred the suit property to his wife Shantabai Lotan Marathe and her name was mutated over

the record of rights of suit property. A perusal of certified copies of 7/12 extracts (Exh 17/1, 17/2 and 17/3) of suit property would show the name of Shantabai is mentioned in the occupant and cultivation column of 7/12 extract for the years 1980 to 2014. Thus, prima facie it appears that Shantabai was the owner of suit property after the death of her husband and was also in possession of it. A certified copy of an affidavit executed before an executive magistrate by Shantabai (Exh 17/8) shows that on 22/03/2022 she had transferred the suit property in the name of plaintiff by mutual partition. A certified copy of mutation entry no. 3364 (Exh 3/2) shows that as per the order of an executive magistrate in revenue proceedings no.125/2022 dated 29/03/2022 the name of plaintiff was mutated to the record of rights by mutual partition effected by owner Shantabai Naval Marathe.

12] The plaintiff claims to be in exclusive possession of the suit property. Pursuant to M.E 3364 (Exh 3/2) the name of plaintiff appears in occupant and cultivation column in 7/12 extracts (Exh 3/1, 17/4, 17/5,17/6) of the suit property for the period of 27/04/2022 to 12/09/2022. However, M.E no. 3364 (Exh 3/2) was challenged by the defendants before sub- divisional magistrate in RTS appeal no. 66/2023 (Exh 24/1) and the same was set aside by him for having not followed prescribed and due procedure by the executive magistrate before passing an order in revenue proceedings no.125/2022. Pursuant to the order by sub- divisional magistrate in RTS appeal no. 66/2023 the M.E no 3364 (Exh 3/2) was set aside and and the name of Shantabai was re- entered in 7/12 extracts of the suit property vide M.E no. 3557.

13] The Ld. Advocate of the plaintiff has relied on **i) Yadaorao Nathuji Kokude vs. State of Maharashtra 1976(0) MH L J 31** in which

Hon'ble Bombay High court has held in para no. 16 that, “ *the entries in the crop statement are not conclusive, but under the provisions of the Indian evidence act, the court may draw presumption under section 114 to hold that a public officer has done his duty in the regular course of business. This is certainly a rebuttable presumption.*”

The Ld. Advocate of the plaintiff has relied on **ii) Shri. Bablo Yeshawant Sawant & Anr Vs. Shri. Vishnu Rama Naik 2006(1) ALL MR 394** in which Hon'ble Bombay High court has held in para 17 and 18 that, “ *According to section 105 of land revenue code presumption of correctness of entries in record of rights and register of mutations:- An entry in the record of rights and a certified entry in the register of mutation shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor. There is no dispute about the proposition that once an entry is made in the record of rights by following the provisions of the land revenue code,1968 a presumption as contemplated by section 105 has to follow it. Any promulgation done due to mistake would not give rise to a presumption available under section 105 of the said code.*”

The Ld. Advocate of the plaintiff has relied on **iii) karewwa and others Vs. Hussain sab khansaheb Wajantri AIR 2002 SC 504** in which Hon'ble Supreme court has held in para that, “ *the presumption of correctness of an entry in revenue record cannot be rebutted by statement in the written statement. Mere statement of facts in the written statement is not a rebuttal of presumption of correctness of an entry in the revenue record. It is for the appellant to revert the presumption by leading evidence. The appellant has not led any evidence to show that entry in the revenue record is incorrect.*”

It is pertinent to note that there is presumption regarding the genuineness of entries made in the record of rights. However, the said presumption is rebuttable. In facts of the present case the M.E no.3364 through which name of the plaintiff was mutated in the record of rights over the suit property has been set aside by the Sub- divisional officer for it being passed without prescribed and due procedure. Thus, here prima facie it appears that the M.E no.3364 relied upon by the plaintiff in support of her claim to be in exclusive possession of the suit property is incorrect and the presumption of genuineness stands rebutted. Therefore, with utmost respect to the ratio laid down by the Hon'ble Apex Court and Hon'ble High Court in the aforesaid judgments, in my modest opinion, the ratio so laid down in the aforesaid cases is not applicable to the facts of the present case and hence, it is of no assistance to the plaintiff.

14] As per the order of sub- divisional magistrate in RTS appeal no. 66/2022 the M.E no. 3364 (Exh 3/2) was set aside. Though revenue records are not documents of title and mutation entry does not confer any right, title or interest in favour of the person. They are used for fiscal purpose only. However, the presumption of possession can be drawn on the basis of revenue records. In the present situation there is nothing on record to show that the plaintiff is in exclusive possession of the suit property. At present the name of Shantabai Lotan Marathe appears in 7/12 extract of the suit property. It is an undisputed fact that Shantabai Lotan Marathe has died. The relation between the plaintiff and the defendants is also not disputed. As relation between the plaintiff and the defendants is not disputed, prima facie they appear to be legal heirs of the deceased Shantabai Lotan Marathe. Therefore, plaintiff and defendants are the co-sharers in the suit property. Thus, even if it is assumed

that the plaintiff is in possession of suit property that possession can only be in the capacity of a co-sharer. In the present matter, it prima facie appears that the plaintiff is not in exclusive possession of the suit property but the defendants are co-sharers in it. Thus, the plaintiff has failed to prima facie show her exclusive possession over the suit property and has no prima facie case in her favour.

15] Thus, in view of the aforesaid discussion, I am of the opinion that the plaintiff has failed to establish a *prima facie* case in her favour. Hence, the point no. (i) is answered in negative.

As to the point no.(ii) and (iii) :-

16] The plaintiff has no *prima facie* case in her favour as she doesn't appear to be in exclusive possession of the suit property. Therefore, I am of the opinion that no injury of irreparable nature would accrue to the plaintiff if an injunction as prayed by her is not granted to her. Therefore, in my opinion the balance of convenience is not in favour of the plaintiff . Hence, the points no.(ii) and (iii) are answered in negative.

As to the point no. (iv) :-

17] As the plaintiff has no *prima facie* case in her favour, as she would suffer no irreparable injury if the relief of temporary injunction is not granted and as the balance of convenience is not in her favour, the points no. (i) to (iii) are answered in negative. Consequently, in answer to point no.(iv), the following order is passed :-

:- ORDER :-

The application is rejected.

Date : 08/07/2024

(Vinita A. Naik)
Jt. Civil Judge Junior Division,
Sindkheda Dist. Dhule