

ORDER BELOW EXH. 5

This is an application under Order XXXIX Rule 1 & 2 of C.P.C. wherein plaintiffs prayed for restraining defendant No. 3 and 12 from running brick factory over suit property Gat No. 467 area 1.60 HR situated mouza Dhadari.

2. It is case of plaintiffs that plaintiffs and defendant No. 1 to 11 inherited the above suit property from their ancestor late Bisan Nagpure. The suit property is ancestral as well as joint family property of parties. Plaintiff's share is involved in suit property. All defendants except defendant No. 3 are residing out of village. The defendant No. 3 is Karta of family. He illegally allowed the defendant No. 12 to run brick factory over suit property and made big pit holes over suit property. In spite of police complaint as well as complaint to Tahsildar, defendant No. 3 and 12 are running the brick factory. They are destroying the fertility of suit property. Therefore plaintiffs brought present suit for partition and injunction.

3. As per plaintiffs, they have proved prima facie case, balance of convenience lies in their favour and they will suffer irreparable loss if injunction is not granted. Therefore, they prayed for temporary injunction as sought.

4. Defendant No. 3 and 12 filed reply (Exh. 19) and contended that the suit is bad for non-joinder for necessary party. They also contended that the suit property being joint family property, other defendants i.e. 1, 2 and 4 to 11 were necessary party to present application. The brick factory is running over suit property from last sixteen years. The defendant No. 12 is running the factory from last two years and all defendants consented for the same. Further the Tahsildar and Gram Panchayat have granted permission for said brick factory. Suit property is not cultivated land. The factory is running over less than the half portion of suit property. Plaintiffs are well aware about said fact, but they suppress the same and filed present false application. Finally they prayed for rejection of present application.

5. Following points arose for my determination and I have recorded my finding against each of them for following reasons :

Sr. No.	Points for Determination	Findings
1.	Whether plaintiffs have proved prima-facie case ?	... No.
2.	Whether balance of convenience lies in favour of plaintiffs ?	... No.
3.	Whether plaintiffs will suffer irreparable loss, if injunction is not granted ?	... No.
4.	What order ?	... Application is rejected.

REASONS FOR THE FINDINGS

6. Perused application, say and rival documents. Heard Ld. Advocate Shri. Shende for plaintiffs and Shri. Bhandarkar for defendants.

As to Point Nos. 1 to 4 :

7. At the outset it is to be noted that plaintiffs come with the theory of ancestral and joint family property. However they filed present application only against defendant No. 3 and 12. Obviously all defendants were necessary party since the consent deed bears signature of all defendants.

8. The entire record shows that plaintiffs on the one hand claiming that the suit property is joint family property and defendant No. 3 is Karta of family who is under possession. On the other hand plaintiffs claimed that defendant No. 3 is illegally using the suit property.

9. It is well settled principle of law that the injunction can not be granted against co-owner or co-sharer unless they are possessing separate share in specified four boundaries. In case at hand it is well clarified that the brick factory is not running over entire suit property but it is upon some portion of suit property. Plaintiffs are legal heir of

deceased Sitaram who is grandson of ancestor Bisan. The defendant No. 1, 2 and 3 to 5 are grandson and grand daughters of late Bisan.

10. Plaintiff's theory is very much clear that they come before court for partition by claiming that suit property is ancestral and joint family property. Further 7/12 extract also shows that the name of plaintiff and defendant are jointly recorded over revenue record of suit property.

11. The consent deeds on record shows that from year 2020 the defendant No. 12 is running brick factory over the suit property. Moreover he has paid Challan to the Tahsildar and also got NOC from village panchayat for running said factory. Further photographs nowhere shows that any crop is standing over suit property nearby the factory. No doubt the consent deeds did not bear the signature of plaintiffs. However it bears signatures of all defendants. Obviously the defendant No. 3 being Karta of family and other defendants are making some source of income for their joint family by running brick factory through defendant No. 12. Moreover the written statement (Exh. 27) of defendants also shows that brick factory is running from last sixteen years and defendant No. 12 is running the same from last two years with their consent. As such it is clearly gathered that the brick factory is not attempt by defendants in the year 2022 only.

12. Obviously the Karta has a right to look after the interest of family members of joint family. The defendant No. 12 is running factory from year 2020, but plaintiffs never objected the same in last two years and they suddenly objected the brick factory in the year 2022. Obviously some dispute appears to be arose with defendants, therefore plaintiffs come before court for partition. The area of suit property is 1.60 HR and 1/6th share of plaintiffs appears to be involved out of half share of late Maniram. Admittedly the brick factory is not running over entire suit property. Further no proof available on record to show that suit property is not remained fertile due to brick factory. Plaintiffs have concern only with their undivided share as discussed above. Plaintiffs can not bring the right of other family members under threat.

13. As per plaintiffs, the defendant No. 3 is Karta of family and he allowed the defendant No. 12 to run the brick factory with the consent of other co-sharer except plaintiffs. It is nowhere clarified by plaintiffs as to why they kept mum over the factory in last two years or last sixteen years. No cogent explanation by the plaintiff. In such circumstances the submission of plaintiffs is not acceptable that defendants are damaging suit property with illegal act.

14. Prima facie the brick factory is not appeared illegal.

Further the brick factory is running by defendant No. 12 from year 2020 with the consent of joint family. Though plaintiffs' signature is not bears over consent deed, however their undivided share is intact which is other than the factory area. Therefore plaintiffs failed to prove prima facie case. Balance of convenience not lies in their favour. Moreover they are not going to suffer irreparable loss since their undivided share is intact. On the other hand brick factory appears to be source of income of joint family, in such circumstances if brick factory is stop, then defendants may suffer their livelihood source. Hence, I have recorded my finding to point No. 1 to 3 in ***Negative***. Resultantly present application is liable to be rejected. Thus I passed following order :

ORDER

1. The application (Exh. 05) is rejected.
2. Cost in main cause.

Place: Tirora
Date : 16/04/2022

(V. G. Karmore)
Civil Judge (Jr.Dn.) Tirora.