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R.C.S. No. 13/2020

Syd. Kamroddin & ors Vs. Syd. Salim & ors

CNR No. MHJN 080000862020

ORDER

(Below Exh. 5)

1] This is the application filed by the plaintiffs u/s 39 (1) (2) of the Code of Civil Procedure, 1908 (hereinafter mentioned as 'CPC') against the defendants.

2] Briefly stated, Mashrutul Khidmat Mash lands bearing gat no. 56 & 154, located at Raunaparada, now in Tq. Ghansawangi, Dist. Jalna was granted by endowment department of Nizam Hyderabad to the ancestors of the plaintiffs for rendering services to Darga Saqladi Baba (hereinafter 'the Darga'). That Idrees was the original Muntakhab holder who died leaving behind two sons Syd Noor and Syd Banemiyan. That the plaintiffs are the decedent of Syd Banemiyan, the last Muntakhab holder, who died leaving behind sons namely Syd Bhaimiya, Syd Miyansaheb and Syd Dadabhai. That the plaintiffs are decedents of Dadamiya, who had a son namely Papamiyan. That Papamiyan had sons namely Syd. Hussain, Syd. Ahmed, Syd Banemiyan, Syd. Azam and Syd. Amir and the plaintiffs are grandsons of Syd. Ahmed.

3] It is stated that a dispute had been arisen between Syd. Banemiyan and Syd. Noor and went before the Court in 1911 in which parties arrived at settlement. Accordingly compromise

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decree was passed by District Judge Maulavi Mohiuddin Ali Khan, Aurangabad declaring 8-8 anna share to both party. That this 8 anna share of both branch was further divided and branch of Syed Ahmed got 2 anna 8 pai i.e. 8 weeks right for rendering services and collecting nazrana in the Darga.

4] It is stated that succession proceedings were filed before The Deputy Collector (Atiyat), Jalna by decedents of Banemiyan namely Syd. Yousuf Syd Amir and Sadroddin Badroddin. That out of one decided by the Deputy Collector was remanded in appeal by the Collector and same decided on 15.06.1962. That said judgment dated 15.06.1962 was challenged and came to be decided By the Collector Jalna after formation of Jalna district on 08.11.1996. That said judgment was also challenged before Maharashtra Revenue Tribunal, Aurangabad (MRT) and came to be dismissed on 07.11.2019. Thus plaintiffs being successors of Banemiyan are entitled to share of 2 anna 8 pai i.e. 8 weeks to render services and collecting nazrana as per Taqta-E-Jumerat i.e. rotation as no share changed as declared in the judgment dated 08.11.1996. However, the defendants have no concern to the Dagra or legal heirs of Banemiyan or Syd Noor are creating obstructions in rendering services and collecting nazrana to the plaintiffs for 8 weeks in every year in the Darga.

5] It is stated that the turn of the plaintiffs for rendering services and collecting nazrana was from 18.12.2019 to 25.12.2019 as per the rotation. But the defendants did not let them to render services and collect nazrana in the Darga and resultantly the matter was reported to the Police, Tahsildar and Deputy Collector and donation boxes came to be sealed. Therefore, the plaintiffs constrained to institute present suit and in which they prayed that their interest of rendering services and collecting nazrana be protected for the period commencing from 30.01.2020 to 05.02.2020 till final decision in the suit.

6] Per contra, defendant no. 1 to 3 and 5 to 14 filed their say below Exh. 18, 20 respectively and commonly and strongly opposed the application. Defendant No. 4 adopted the say of other. They specifically denied rights of the plaintiffs to render services and collecting nazrana for 2 Anne 8 Pai i.e. 8 weeks in a year in the Darga. That the suit hit by non-joinder of necessary party as the plaintiffs have not made party, whose favour succession have been granted. That the plaintiffs are not decedent of Muntakhab holder Syd. Amir Syd. Lal and therefore pedigree claimed is false. That the share table shown in Civil Suit No. 32 of 1320 fasli was made by Patil patwari of the village without jurisdiction and verifying heirs of Mutakhab

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holder Syd Amir Syd. Lal. Also the Tahsildar had no jurisdiction to decide share in the Atiyat grant on the basis of Muntkhab therefore cannot be accepted as correct share table. That the dispute involved in the suit is pending before MRT and if injunction is granted it will be restrain to the defendants from their rights to render services in the Darga as per Atiyat grant. On the other, the plaintiffs failed to show prima facie application. In fact no irreparable loss will be caused, which cannot be compensated by of damages or compensation. Therefore prayed for rejection of the application.

7] Heard both sides. Perused the applications, say and documents filed alongwith. Following points arise for my determination to which I record my findings for the reasons given thereunder:

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Do the plaintiffs prove that they have prima-facie case?	...Yes.
2)	Do the plaintiffs prove that balance of convenience tilts in their favour?	...No.
3)	Will the plaintiffs suffer irreparable loss if injunction is refused?	...No.
4)	What order?	<u>Application is rejected.</u>

REASONS

8] In support of the claim, the plaintiffs have filed on record copies of judgments and orders in 52/1320 fasli, 50/61, 63/1996, 23/B/2001/J. On the other hands, the defendants have also filed on records various documents such as copies of judgments, orders, inquiry of muntakhab, translated copies of revenue documents.

9] Heard learned counsels for both sides at length. Learned counsel for the defendants relied on judgments of the Hon'ble Parent High Court in 1] Ramkrishna Bajirao Gotmare Vs. Kanhaiyalal Tribhuwanlal Shah, reported in (1990) 2 MhLJ 897, which deals with doctrine of merger. 2] The Public Information Officer, Vs. A.P. Information Commissioner, reported in (2009) AIR (AP) 73, which deals with Muntakhab document, and 3] Mohammad Khairuddin Vs. Moinuddin Shaih, reported in (2008) 5 ALL MR 21 which deals with Wakf property and procedure of declaration.

AS TO POINT NO. 1 TO 3:

These points are interlinked with each other therefore taken for discussion together.

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10] At the outset it is relevant to state that the Hon'ble Apex Court through catena of judgments like landmark judgment in **M/S Gujarat Bottling Co. Ltd. & Ors vs The Coca Cola Co. & Ors, reported in 1995 SCC (5) 545**, held that the Court needs to follow certain guidelines while considering an application for grant of temporary injunction, some of which are briefly stated hereunder:

The applicant seeking relief of temporary injunction shall have to establish a prima facie case in his favour. For this purpose, the Court will not examine the merits of the case rather only the basic facts on which it is established that the applicant has a prima facie case to contest.

The court has to examine the balance of convenience i.e. the balance of comparative loss caused to the applicant and the respondent in the case of not passing the order.

The court will first of all will examine what is the extent of loss that would be caused to the applicant if the order is not passed and also whether it is reparable by monetary compensation i.e. by payment of cost. Then it will examine the loss suffered by respondent if the order is passed and thereupon it has to see which loss will be greater and irreparable. The party who would suffer greater loss would be said to be having balance of

convenience in his favour and accordingly, the court will pass or refuse to pass the order.

11] Now stage has been set to examine the facts of present case in view of principles laid down in supra case. The Court first of all has to examine what is the extent of loss that would be caused to the plaintiffs/applicants if the order is not passed and also whether it is reparable by monetary compensation i.e. by payment of cost. Now turning to the facts of the case, the plaintiffs claiming themselves to be the decedents of the last Muntakhab holder Syd. Banemiyan and therefore entitled to share of 2 anna 8 pai i.e. 8 weeks to render services and collecting nazrana as per Taqta-E-Jumerat i.e. rotation as no share changed as declared in the judgment dated 08.11.1996 till challenged before MRT. However, the defendants have no concern to the Dagra or legal heirs of Banemiyan are creating obstructions in rendering services and collecting nazrana to them in the Dargah therefore, they have instituted present suit for relief of perpetual injunction and in the meantime there being apprehension of interference in the right of rendering services and collecting nazrana for the period from 30.01.2020 to 05.02.2020, they have filed present interim application. On the other hands, the defendants denied the plaintiff's right as claimed and specific share. It is to note here that the money

and nazrana/gift received through the services during the turn period claimed can be calculated and paid in the nature of money by way of compensation if the plaintiffs finally succeed. No irreparable loss appears to be caused to the plaintiffs if injunction is not granted in their favour.

12] Thus the plaintiffs though have a case to contest, relief claimed by them can be reparable by monetary compensation and otherwise on final merit of the case. In **M/S Best Sellers Retail (I) P.Ltd Vs M/S Aditya Birla Nuvo Ltd. & Ors, decided on 8 May, 2012**, the Hon'ble Apex Court observed that prima facie case alone is not sufficient to grant of injunction and held that:

“Yet, the settled principle of law is that even where prima facie case is in favour of the plaintiff, the Court will refuse temporary injunction if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable.”

13] Be that as it may be, the plaintiffs have asked for interim relief for the previous period commencing from 30.01.2020 to 05.02.2020, which cannot be granted. Because it shall not serve the purpose of granting injunction and also save the interest of the plaintiffs. It would be meaningless to pass such an order for the previous period. On the other hand, it is claimed that the defendants are rendering services in the

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Darga, which is not specifically denied by the plaintiffs and therefore balance of convenience not tilts in their favour.

14] In cumulative effect of above discussion, I have answered point no. 1 to 3 accordingly and in answer to point no. 4, the following order:

ORDER

- 1) The application (Exh.5) is rejected.
- 2) Both parties are directed to proceed with the suit without any unnecessary adjournment.
- 3) Needless to mention that this order shall not cause any impression over the Court at the time of final decision of the suit claim.

Date- 10.03.2021.

(H.B.Pardeshi)
Civil Judge (JD), Ghansawangi.

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Certificate

I affirm that, the contents of this PDF are same words for words, as per the original judgment.

Name of Stenographer : Shri. Nikalje (G-III)

Name of Court : Civil Judge (Jr.Dn.), Ghansawangi.

Upload on date : 10.03.2021.

Sd.

Civil Judge (Jr.Dn.), Ghansawangi.