

MHKO010051982019



IN THE DISTRICT COURT, KOLHAPUR AT KOLHAPUR
(Presided over by P. S. Vithalani, District Judge-5, Kolhapur)

Ankush Narayan Patil

Appellant

Vs.

Pandurang Narayan Patil (Deceased)
through legal heirs and 4 Ors.

Respondents

Order below application at Exh. 5

1] This is an application filed by appellant under the provisions of Or. 39, R. 1 and 2 read with Section 151 of the Code of Civil Procedure seeking temporary injunction restraining respondent Nos. 1A and 1B from creating any third party interest in the suit property till disposal of this appeal.

2] The appellant herein is the original plaintiff; whereas respondents are original defendants in Regular Civil Suit No. 673/2011 decided by the learned Trial Court. Therefore, hereinafter parties would be referred to as per their status before the learned Trial Court.

3] The plaintiff instituted R.C.S. No. 673/2011 seeking partition and separate possession of suit property namely agricultural land bearing Gat No. 807 admeasuring 0H 71.8R plus 1R *pot kharaba* situated at village Vadakshivale, Tal. Karveer, Dist. Kolhapur

as described in the plaint. According to the plaintiff, defendant Nos. 1 and 2 are his real brothers. Before the year 1950, father of plaintiff and defendant Nos. 1 and 2 namely, Narayan Govind Patil obtained possession of suit property as a tenant and as a *Karta* of joint family. Thereafter, in the year 1964, suit property was purchased from the nucleus of the joint family income in the name of defendant No. 1 being elder son. Defendant Nos. 3 to 5 are sisters of plaintiff and defendant Nos. 1 and 2, who relinquished their right, interest and share as per registered Relinquishment Deed in favour of defendant Nos. 1 and 2. By executing registered partition-deed dated 01/07/2002 all ancestral properties were partitioned between parties, but at that time suit property was kept joint. However, the defendant No. 1 thereafter tried to alienate the suit property. The plaintiff was not given his share. Hence, plaintiff instituted suit for partition.

4] According to the case of the defendant No. 1, suit property was cultivated by him as a tenant. According to him, he has purchased the suit property from his separate income. He denied that suit property is joint family property of plaintiff and defendant Nos. 1 and 2.

5] After full fledged trial, the learned Trial Court dismissed the suit. Hence, unsuccessful plaintiff preferred the present appeal on various grounds. In the appeal, the present application seeking temporary injunction is filed.

6] Respondent Nos. 1 and 2 have resisted the application by

filing their reply at Exh. 18. According to them, the suit property is self acquired property of deceased defendant No. 1 and the plaintiff has no share therein. Therefore, prayer for rejection of application is made.

7] I have heard learned advocate Shri. S.D. Kulkarni for the appellant and learned advocate Shri. A.P. Powar for respondent Nos. 1A and 1B. Also, gone through written notes of arguments at Exh. 23 submitted on behalf of the appellant.

8] Looking to the pleadings of the parties and submissions made by both sides, following points arise for determination, to which findings are recorded for the reasons given below :

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the appellant/plaintiff has <i>prima facie</i> case in his favour ?	Yes.
2	In whose favour balance of convenience lies ?	In favour of appellant/plaintiff
3	Whether appellant/plaintiff will suffer irreparable loss, if temporary injunction is refused ?	Yes.
4	What order ?	Application is allowed.

REASONS

AS TO POINT NO. 1 :-

9] On one hand, according to the plaintiff, his father was cultivating the suit property as a tenant since before 1950. On the other hand, according to deceased defendant No. 1, he was

cultivating the suit property as a tenant. From the papers on record and particularly the copy of the judgment of the learned Trial Court it appears that before the learned Trial Court the plaintiff produced various rent receipts to show that his father was cultivating the suit property as a tenant. It appears that deceased defendant No. 1 did not produce any rent receipt in support of his contention. Similarly, it appears that agreement of sale in respect of suit property was produced by the plaintiff in the suit and not by the defendant No. 1. If really, the suit property was self acquired property of the deceased defendant No. 1, then custody of the agreement should have been with him. There is no doubt that at the trial the plaintiff failed to establish that suit property is joint family property of him and defendant Nos. 1 and 2. However, after hearing of the appeal it is to be decided as to whose case is correct. At this stage, *prima facie* material is to be seen. It is correct that in the registered partition-deed, suit property is not included. However, according to the case of the plaintiff, it was decided between parties to keep the suit property joint and to partition the same afterwards as per their convenience. Be it noted, the learned Trial Court has recorded the finding that plaintiff is also in joint possession of suit property with defendant Nos. 1 and 2. Since, the material shows that plaintiff also jointly possesses the suit property, there appears substance in the contention of plaintiff at least *prima facie*. Moreover, during the pendency of the suit, temporary injunction was granted to the plaintiff. No doubt, it only continued till decision of suit and on the judgment being passed by the learned Trial Court in the suit, temporary injunction came to an end. However, it appears that material on record *prima facie* shows that the plaintiff has arguable case. Hence, I record the finding

of point No. 1 in the affirmative.

AS TO POINT NOS. 2 AND 3 :-

10] Definitely, if during the pendency of the appeal, respondent Nos. 1A and 1B create any third party interest over the suit property, then there would be multiplicity of litigation. It would affect property rights of the appellant/plaintiff. It would also cause irreparable injury to the appellant/plaintiff. On the other hand, during arguments learned advocate Shri. A.P. Powar appearing for respondent Nos. 1A and 1B has submitted that respondent Nos. 1A and 1B are not going to alienate the suit property during pendency of appeal. In that view of the matter, no hardship would be caused to respondent Nos. 1A and 1B, if temporary injunction is granted. Hence, I record findings on point Nos. 2 and 3 accordingly.

AS TO POINT NO. 4 :-

11] In the result, the application would succeed. Hence, in answer to point No. 4, the following order is passed -

ORDER

1. Application at Exh. 5 is allowed.
2. The respondent Nos. 1A and 1B are hereby restrained from creating any third party interest in respect of suit property till disposal of this appeal.
3. Costs in cause.

(Dictated and pronounced in the open Court.)

Kolhapur
Date : 24/02/2021

(P.S. Vithalani)
District Judge-5, Kolhapur