

MHKO050004142019



Reg.Civil Suit No.29/2019

Parampujya Dhanvantari Puri Baba Alias
Bandu Bimrao Shintre and 5 others
Vs Dinkar Bandu Shintre & others

Order below Exh.5
(Passed on 07/01/2021)

1) The plaintiff has invoked the jurisdiction of this Court vide Order 39 Rule 1 and 2 of the Code of Civil Procedure (for short 'CPC') for restraining defendants from causing obstruction and from alienating the land/plot admeasuring 0 H. 17 R in Block No.194 alongwith 684 sq.ft. building in it situated at village Sajani, Tal.Hatkananagale, Dist.Kolhapur. (Here-in-after referred to as '**suit property**').

2) According to plaintiff, they are the legal heirs of Reverend Dhanwantari Puri Baba (in short "Puri Baba"). Puri Baba was propagandist, studious and famous in Ayurvedic Medicine. He was broadcasting and selling the Ayurvedic Medicine in entire country. His medicine was resulted effective to the patient Sunil Laxman Pujari (brother of defendants). His health was improved due to medicine of Puri Baba. Therefore, defendants were very happy, accordingly, defendants and alongwith Sunil Pujari gifted the suit property to the Puri Baba. Meanwhile, Puri Baba and plaintiffs constructed the building in the suit property. Accordingly, suit property is in plaintiffs' possession. Defendants have no any concern

with the suit property and the Puri Baba. Defendants prepared fabricated Will Deed of the Puri Baba and mutated their name on the revenue record of the suit property. On the basis of mutation defendants are trying to dispossess the plaintiff from the suit property and they may also alienate the same. Accordingly, plaintiff filed this suit.

3) The defendants filed written statement and reply at Exh.16. They admitted the status of Puri Baba, the fact that he was famous in Ayurvedic Medicine, he treated Sunil Pujari and accordingly, defendants had gifted suit property to the Puri Baba. Defendants denied rest of claim. According to them, Puri Baba was Celibate. So, no reason to accept that plaintiffs are his legal heirs. Puri Baba and late Bandu Bhimrao Shintre are different persons. Plaintiffs are creating imaginary story to grab the suit property. Further contention of defendants is that only due to social aspect they permitted the Puri Baba to use the suit property as a hermitage and only for the purpose of treatment to poor and needy persons. After the death of Sunil Pujari, Puri Baba again returned the suit property to the defendants by way of Will Deed and since then suit property is in their possession. Further contention of the defendants is that suit property is not in possession of plaintiff and therefore, plaintiff is not entitled for the discretionary relief. On these grounds defendants prayed to reject the application.

4) From the foregoing pleadings and after hearing the submissions advanced by the parties, following points arise for determination. My findings are mentioned against each point for the reasons given further.

Points	Findings
1) Whether plaintiff has made out <i>prima-facie</i> case for grant of temporary injunction ?	... In the affirmative
2) Whether plaintiff would suffer irreparable loss if temporary injunction as prayed is refused ?	... In the affirmative
3) Whether the balance of convenience lies in favour of plaintiff ?	... In the affirmative
4) What order ?	... Application is allowed.

REASONS

AS TO POINT NO.1 :-

5) To show the entitlement of the relief of temporary injunction plaintiff shall establish *prima facie* case, balance of convenience is tilt in his favour and refusal of injunction would result in irreparable loss. It is also trite that the relief of injunction being a equitable relief shall not be granted without verifying the factual position and without ignoring the consequences on the right of other side. In other words, the relief of injunction shall not affect on the right of other side who is not in fault.

6) Before touching to merit of application first it would be proper to mention some admitted facts. Puri Baba was treating to Cancer Patients. He was selling Ayurvedic Medicine. Initially defendants gifted suit property to him. Now it is necessary to see that whether suit property is in possession of plaintiff and defendants are causing obstruction to the possession of plaintiff.

7) Both parties produced registered Gift Deed, Will Deed, copies of mutation entry, 7/12 extracts, Index II, property extract, tax

receipts. Needless to mention that initially defendants were owner of the suit property and they gifted the same to the Puri Baba on 31/03/2010. Now fact appears to consider about the position of suit property since 31/03/2010 and after the death of Puri Baba. Available record and pleading of both parties are itself sufficient to accept that since 31/03/2010 till the execution of Will Deed i.e. till 27/07/2017 suit property was in possession of the Puri Baba on the basis of Gift Deed. According to plaintiff, they are legal heirs and they constructed the building in the suit property. Defendants directly refusing this fact and claimed that neither the plaintiffs are the legal heirs of the Puri Baba nor they constructed said building and defendants themselves constructed the said building. Now it is necessary to see on which basis both parties claiming their possession over the suit property.

8) Plaintiffs stated on oath that they are the legal heirs of late Puri Baba. Witnesses Mr.Annasaheb Shamrao Patil, Mr.Ramchandra Bhimrao Shintre, Mrs.Akkatai Appasaheb Shintre and Mr.Pravin Narayan Bhujbal stated on oath that they are villager of Village Sajani. They had acquaintance with late Puri Baba, plaintiffs are legal heirs of late Puri Baba and suit property is now in possession of plaintiffs. Defendants have not produced the affidavits of any other villagers to show that the plaintiffs and above mentioned witnesses are relatives or these witnesses have very good concern with the plaintiffs or they have any other benefits from the suit property. If it was so then defendants could definitely rebut this fact so as to bring out the factual aspect. The very act of defendants to avoid to rebut the statements of these witnesses who are the villagers is itself sufficient to hold that these witnesses stating the factual

aspect. At this juncture and in absence of any other contrary aspect no reason to disbelieve these witnesses to accept the contention of plaintiffs only to extent to decide the interim application. No doubt the defendants disclosing their ownership on the basis of 7/12 extract, but mere mutation of name of defendant without establishing the possession over the suit property it cannot be said that the suit property is in their possession.

9) That apart, it is fact that suit property is in two part. One part is open plot and another part is 684 sq.ft. building i.e. House No.684. Plaintiff is claiming that entire suit property is in his possession viz-a-viz defendants also claiming the same. Gift Deed dtd.31/03/2010 discloses that defendants gifted 0 H. 17 R. portion to the Puri Baba. Gift Deed nowhere discloses that 684 sq.ft. building (Grampanchayat Property No.684) was in existence at the time of execution of the Gift Deed and defendants gifted the suit property alongwith the said building to the Puri Baba. If factually the said building was in existence defendants could mention the same alongwith its property number in the Gift Deed. Once defendants not mentioned this important aspect in the Gift Deed then adverse inference can be drawn that the said building was not in existence at the time of execution of Gift Deed. Moreover, property assessment list of G.P.No.684 also discloses that the plaintiffs are owner and occupier. It means plaintiffs are residing in part of suit property i.e. G.P.684. Even witnesses also stated that suit property is in possession of plaintiffs. If it was in possession of defendants then plaintiffs have no reason to reside in the part of suit property and once plaintiffs brought some evidence to show that they are residing in part of suit property, it means they constructed the said building over the suit

property and once there is some material to hold that plaintiffs constructed the building over the suit property then suit property was in their possession at the time of construction.

10) This is not the end but the Will Deed only discloses that the Puri Baba bequeathed the suit property to the defendants. Will Deed nowhere discloses the description of the said building or the fact that Puri Baba actually handover the suit property alongwith the building to the defendants. Moreover, except the 7/12 extract defendants have not brought on record any other document to prove their possession over the suit property and the said building. Considering this situation, I am of the opinion that plaintiffs have a arguable case on merit which is required a consideration and plaintiffs establishes a prima facie case. Hence, I answer this point **as affirmative.**

AS TO POINT NO. 2 TO 4 :

11) To see the balance of convenience it is necessary to compare the case of parties. Comparative mischief or inconvenience which is likely to sue from withholding the injunction will be greater than which is likely to arrive from granting it. It is a matter of record that plaintiffs succeed to establish prima facie case in their favour. They are owner and possessor of the suit property. On the contrary defendants have not produced any other document to show that suit property is in their possession and even though defendants claiming their possession over the suit property. In such situation, if the application is rejected then defendants may dispossess the plaintiffs or they may alienate the suit property on the basis of their mutation

on revenue record of the suit property and it would be difficult for the plaintiffs to get remove the same and it may result in inconvenience and irreparable loss of the plaintiffs. As well preventing the defendants for few months cannot be inconvenient to them. In such situation, refusing of injunction would be inconvenience to the plaintiffs and granting of injunction no way cause any irreparable loss to defendants. In other words, balance of convenience is tilt in favour of plaintiffs and not the defendants. In such situation, refusal of injunction may result in irreparable loss of plaintiffs. Therefore, I have answered point No.2 and 3 **as affirmative**. In the result, I proceed to pass following order.

ORDER

- 1) Application is allowed.
- 2) The defendants, their agent, servant or anybody claiming through them are hereby temporally restrained from causing any sort of obstruction over the suit property and defendants have temporally restrained from alienating or creating any other charge over the suit property till the decision of the suit.
- 3) Costs in main cause.

Date: 07/01/2021
Ichalkaranji.

(P.S.Bhandari)
2nd Jt. Civil Judge Junior Division,
Ichalkaranji.