

MHKO110015232017



Regular Civil Suit No. 159/2017
(CNR No.MHKO110015232017)

ORDER BELOW EXH.5

01. The plaintiff has filed this temporary injunction application under Order 39 Rule 1 and 2 and Section 151 of the Code of Civil Procedure, 1908.

Suit Properties -

(A) Entire Gat No. 113 admeasuring area 0 H 69 R situated at Wathar Tarf Udgaon, Tal. Hatkanangale, Dist. Kolhapur

(B) Entire Gat No. 230 admeasuring area 0 H 45 R situated at Wathar Tarf Udgaon, Tal. Hatkanangale, Dist. Kolhapur

(C) Entire Gat No. 417 admeasuring area 1 H 07 R situated at Wathar Tarf Udgaon, Tal. Hatkanangale, Dist. Kolhapur

(D) Gat No. 2662/A admeasuring area 0 H 78 R situated at Kumbhoj, Tal. Hatkanangale, Dist. Kolhapur out of which 4 Annas property i.e. 0 H 19.50 R situated at Eastern side having following four boundaries -

Towards East	- Property of Rauso Dhag,
Towards West	- Remaining property of same Gat No.,
Towards South	- Road,
Towards North	-

(E) C. S. No. 432 admeasuring area 2803 sq. meters Tenure A situated at Wathar Tarf Udgaon, Tal. Hatkanangale, having

following four boundaries as under -

Towards East	- C. S. No.433
Towards West	- C. S. No.431
Towards South	- C. S. No.427
Towards North	- C. S. No.434

Thus above mentioned properties are subject matter of the suit, hence hereinafter referred as "**suit properties**".

Brief facts of the case of the plaintiff are under :

02. The plaintiff contended that, suit properties are ancestral joint family properties of plaintiff and defendants. The father of plaintiff and defendants i.e. Babu Bhau Shete died on 02/05/2009 and his wife Banubai @ Anusaya was died on 20/05/2001. Therefore plaintiff and defendants are heirs of Babu and Banubai. The plaintiff married with Vishnu Dadu Pandav. The grand father of plaintiff i.e. Bhau Daji Chambhar @ Shete died on 20/12/1950 leaving behind his heirs Maruti, Babu (father of plaintiff and defendants), Ananda and Mhadu. Out of which only Mhadu is alive. There was partition between Bhau Daji Chambhar and his sons. However there is no partition effected by metes and bounds in the family of Babu Bhau Chambhar @ Shete. He has also not made any Will in favour of anybody. The genealogy of Babu Bhau Shete is as under -

Babu Bhau Shete

(Deceased on 02/05/2009)

Banubai @ Anusaya

(Deceased on 20/05/2007)

Kashinath (Deft.No.1)	Hambirrao (Deft.No.2)	Nilawati (Plaintiff)	Sarjerao (Deft.No.3)	Bebatai (Deft.No.4)

03. The plaintiff further submitted that, she claimed her share in the suit properties, however defendants refused to give her share in the suit properties. Therefore she has filed the suit for partition and claimed her 1/5th share in the suit properties. She further submitted that, she has apprehension that, as the names of defendant No.1 to 3 are reflecting on the revenue records of the suit properties, they will sell or alienate or create third party interest in the suit properties. Hence she prayed for granting injunction against defendants.

04. After service of summons the defendant No.1 and 2 appeared and filed their written statement and say at **Exh.29**. The legal heirs of defendant No.3 (A) to 3(C) appeared and filed pursis at **Exh.52** and they have admitted the written statement and say filed by defendant No.1 and 2. The plaintiff has not claimed any relief against the defendant No.4. The defendant No.1, 2 and 3(A) to 3(C) have denied the contentions made in the application by stating that, all co-sharers are not made party to the suit. Hence suit is bad for non joinder of necessary parties. Defendants have admitted that, plaintiff and defendants are legal heirs of deceased Babu Bhau Shete. They denied that, suit properties are ancestral properties of plaintiff and defendants. They have admitted the geneology as provided in para 3 of the application. They submitted that, their predecessor – Bhau Daji Chambhar had effected the partition as to the suit properties in the year 1950 as per The Hindu Law. The plaintiff is not having any right in the suit property. She has filed the false suit against them.

05. As per further contentions of defendants, the marriage of plaintiff was performed with Vishnu Dadu Pandav in the year 1976. Her father had bared all expenses in her marriage. Due to some disputes between herself and her husband, she went to reside with the defendant No.1 to 3. Later on compromise took place between herself and her husband and she went to reside with her husband in the year 1985. At that

time the plaintiff has claimed her share in the suit properties from defendants and her father. The plaintiff has relinquished her share in the suit properties by accepting Rs.2 Lakh from defendant No.1 to 3.

06. Defendants further contended that, the suit property Gat No.230 was self acquired property of deceased Babu Bhau Shete. During his lifetime, he has given the Gat No.230 to defendant No.1 to 3. Therefore the plaintiff is having no right in the said property also. Further as per Mutation Entry No.1161, their father has allotted Gat No.113 and 417 to defendant No.1 to 3 by filing necessary application before the Revenue Department. Further Gat No.2662/A is self acquired property of defendants and plaintiff is not having any right the said property.

07. On 08/08/1994 there was partition took place between defendant No.1 to 3 vide registered deed No.2645/1994. The plaintiff is aware about the same. Since the year 1994, defendant No.1 to 3 are cultivating the said land. Defendants have also dig well in the suit property and also put pipeline. Defendants have submitted that, plaintiff is not having any right in the suit properties. Therefore they prayed to reject the application with costs.

08. Heard arguments of Ld. Counsels of both sides at length. Considering rival pleadings of both parties and documents filed on record, following points arose for my determination. I have given my findings to each of them with reasons herein under :

<u>Sr.No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1)	Whether plaintiff has prima facie case ?	<i>In the Affirmative</i>
2)	Whether balance of convenience lies in favour of the plaintiff?	<i>In the Affirmative</i>

3)	Whether plaintiff will suffer irreparable loss if the temporary injunction is not granted against defendants ?	<i>In the Affirmative</i>
4)	What order ?	<i>Application is allowed with costs.</i>

REASONS

09. In order to prove her case, the plaintiff has filed 7/12 extract of Gat No.2662/A situated at Kumbhoj, Tal. Hatkanangale, Dist. Kolhapur at **Exh.3/1**, extract of account No.90 belonged to Kashinath Babu Shete at **Exh.3/2**, extract of account No.600 belonged to Hambirrao Babu Shete at **Exh.3/3**, extract of account No.574 belonged to Sarjerao Babu Shete at **Exh.3/4**, 7/12 extracts of Gat No.113, 230, 417 situated at Wathar Tarf Udgaon, Tal. Hatkanangale, Dist. Kolhapur at **Exh.3/5 to Exh.3/7**, extract of C.S.No.432 situated at Wathar Tarf Udgaon, Tal. Hatkanangale, Dist. Kolhapur at **Exh.3/8**, copy of Mutation Entry No.1058, 1153, 392, 306, 273, 222, 210, 202, 656, 1161, 14707, 14227, 466, 469 of Wathar Tarf Udgaon, Tal. Hatkanangale, Dist. Kolhapur at **Exh.3/9 to Exh.3/20**, map of C.S.No.432 situated at Wathar Tarf Udgaon, Tal. Hatkanangale, Dist. Kolhapur at **Exh.3/21**, death certificate of Babu Bhau Shete at **Exh.3/22**, death certificate of Banubai @ Anusaya Babu Shete at **Exh.3/23**, amended No.13 to 16 by Land Record, Hatkanangale at **Exh.3/24**, Partition Deed No.4447/2013 at **Exh.3/25**, Vivah yadi of Nilawati and Vishnu at **Exh.3/26**, Mutation Entry No.838, 14307 of Wathar Tarf Udgaon, Tal. Hatkanangale, Dist. Kolhapur at **Exh.3/27 to Exh.3/27-A** on record. The plaintiff has also filed 7/12 extract of Gat No.230 for the year 2007-2015, Gat No.113 for the year 2007-2012, Gat No.417 for the year 2001-2015 situated at Wathar Tarf Udgaon, Tal. Hatkanangale at **Exh.61/1 to Exh.61/3**, Mutation entry No.1160 and 1549 of Wathar Tarf Udgaon, Tal. Hatkanangale at **Exh.61/4**

to **Exh.61/5** on record. The said documents will be taken into consideration at appropriate stage whenever required.

10. The advocate for plaintiff has relied upon **P. Kaliappa Gouder and others V. Muthuswami Mudaliar [AIR 1987 MADRAS 24]** wherein it is observed by the Hon'ble Madras High Court that,

Hindu Law – Partition – Principles concerning – Separate enjoyment for sale of convenience is no partition – Deepening of well, laying underground pipes, getting loans on security of portion in one's possession are not adequate proof of partition.

The advocate for plaintiff has further relied upon **MAHARWAL KHEWAJI TRUST (REGD.) FARIDKOT vs. BALDEV DASS [2005(1) Mh.L.J.1043]** wherein it is observed by the Hon'ble Supreme Court that,

Civil Procedure Code, O.39, RR. 1 and 2 – Unless case of irreparable loss is made out, Court should not permit nature of property being changed which includes also alienation or transfer of property.

The advocate for plaintiff has further relied upon **PRABHAKAR s/o LATE RAJARAMJI LAMBAT vs. SHANTARAM s/o LATE RAJARAMJI LAMBAT and others. [2009(6) Mh.L.J.71]** wherein it is observed by the Hon'ble High Court that,

Hindu Law – Partition of joint family property – Where share of each coparcener is defined by metes and bounds he become full owner of the same.

The advocate for plaintiff has further relied upon **VINEETA SHARMA Vs. RAKESH SHARMA and others [2021(1) Mh.L.J.646]** wherein it is observed by the Hon'ble Supreme Court that,

(b) Hindu Succession Act (30 of 1956 as amended by Act 39 of 2005), S.6 - Devolution of interest in coparcenary property – Since right of a daughter in coparcenary is by birth, it is not necessary that father coparcener should be living on 9-9-2005.

AS TO POINT NO. 1 TO 3 :-

11. The point Nos.1 to 3 are interlinked with each other, hence to avoid the repetition, I have taken them together for discussion.

12. Perused the record and documents. On perusal it reveals that, names of defendants exists on 7/12 extracts of suit properties as possessors and owners of the suit properties. They came with the defence that, the plaintiff has relinquished her share in the suit properties by accepting Rs.2,00,000/- from them. In support of these contentions, they have not filed any Release Deed on record.

13. The plaintiff came with the specific case that, suit properties are ancestral joint family properties of their predecessor. Defendants have denied that, Gat No.230 is ancestral property by claiming that, it is self acquired property of their predecessor Babu Bhau Shete. Further it is their contention that, Babu Bhau Shete during his life time allotted the Gat No.230 amongst defendant No.1 to 3 vide Mutation Entry No.1161. On perusal of the Mutation Entry No.1161, it reveals that, Gat No.113, 417 and 230 were clearly allotted to defendant No.1 to 3 on 20/09/1990. It seen that, Babu Bhau Shete has himself applied for the same before the revenue

authority. The 7/12 extract filed alongwith list **Exh.61/1 to 61/3** supports contentions of defendants. Therefore from 7/12 extracts and mutation entries, it reveals that, defendant No.1 to 3 are cultivating suit properties i.e. Gat No.230, 113 and 417 as per Mutation Entry No.1161, their names exists on the 7/12 extract accordingly.

14. The defendants have not filed any documents on record to show that, the plaintiff has relinquished her share in favour of defendant No.1 to 3 and her father. The defendants came with the theory that, suit properties are no ancestral properties, then question remains why and how the plaintiff has relinquished her right in favour of defendant No.1 to 3 and her father. It is admitted fact to defendants that, the plaintiff had relinquished her share in the suit properties in the year 1985, for which defendant No.1 to 3 paid Rs.2 Lakh to her and she relinquished her share in the suit properties. Unless and until she is having right in the suit properties, she will not relinquish her share in the suit properties. The plaintiff has not filed any document to show that, there was partition took place between the predecessor of suit properties. They have filed Partition Deed dated 05/07/2013 on record, which prima facie shows that, the partition took place between Smt. Kalawati Dadu Chambhar (Pandav), Shri. Vishnu Dadu Pandav @ Chambhar, Shri. Dilip Dadu Pandav @ Chambhar, Kanchan Dadu Chambhar as to the Gat No.1270. Prima facie there is no document on record to show that, there was partition took place between predecessor of plaintiff and defendants. Further from the property card of suit properties, which is filed at **Exh.3/8**, it reveals that, the name of plaintiff alongwith defendant No.1 to 4 was exists as heir of deceased – Babu Bhau Shete. Plaintiffs have prima facie proved that, the suit properties are ancestral properties of herself and defendant No.1 to 3. In such circumstances, if the suit properties are sold out or any third party interest will create on suit properties, it will ultimately cause irreparable loss to the rights of the plaintiff in the suit properties. Therefore the

apprehension that, defendants will alienate and create third party interest is genuine one. Therefore defendant No.1 to 3 needs to be restrained from alienating or creating third party interest in the suit properties.

15. Considering all above reasons, it prima facie reveals that, the plaintiff is having prima facie case. Balance of convenience lies in her favour. If temporary injunction is not granted against defendants, then irreparable loss will be caused to her. Hence, I answer issue No.1 to 3 in affirmative.

AS TO POINT NO.4 -

16. Considering findings of point No.1 to 3, the application deserves to be allowed with costs. Hence, I pass the following order-

ORDER

- 1] The application is hereby allowed with costs.
- 2] The defendant No.1 to 3 or any person on their behalf are hereby restrained from alienating or creating any third party interest on the suit properties till the final decision of the present suit.

Date : 05/03/2022

(J. S. Gaikwad)
Civil Judge Junior Division,
Peth-Vadgaon