



**ORDER BELOW EXH. NO. 05 IN R.C.S. NO.
95/2018**

Bebitai Dashrath Telvekar Vs. Gangubai Shiva Telvekar

This is the application under Order XXXIX, Rule 1 and 2 of Code of Civil Procedure, 1908 (*hereinafter referred to as 'the C.P.C. for the sake of brevity and convenience*). By way of this application plaintiffs seek interim injunction so as to restrain the defendants from ousting them from possession of suit property at Sr. No. 1/B. Plaintiffs also clam interim injunction so as to restrain the defendants from not changing or making any changes in the nature or character of the suit properties at paragraph No. 1/A and No. 1/B of the suit.

02. The case pleaded by plaintiffs is as follows .

a) The suit properties consist of immovable agricultural properties situated at Pimpalgaon Khurd, bearing Gat No. 395, 470, 485, 492, 464 and 495 with various area as described in paragraph No. 1/A of the interim application. Suit properties also consist of immovable house properties situated at Pimpalgaon khurd having C.S. No. 730 (area-741 sq.mts.) and C.S No. 733 (area-20 sq.mts) . Shiva Rama Telvekar, is the propositus. He had entered into two marriage, firstly with Aakkatai (first wife) and then with Gangubai (defendant No. 1). Defendant No. 2 and 3 are sons of defendant No. 1 and Shiva. Dashrath was son of Aakkatai and Shiva. Plaintiff No. 1 is widow of Dashrath. Plaintiff No. 2 and 3 are children of Dashrath and plaintiff

No. 1. Thus, plaintiffs and defendants are part of the same joint family. They are co-parceners. The suit properties are the ancestral and joint family properties of plaintiffs and defendants.

b) After the death of Aakkatai, Gangubai harassed Dashrath. Hence, Dashrath left ancestral house and started residing at Pimpalgaon. After marriage with Dashrath, plaintiff No.1 started residing at suit property at No. 1/B. Dashrath died on 05/06/1986. Plaintiff No. 1 and 2 are still residing in suit property at Sr. No. 1/B in the open space and in the house made of shed. Defendants, using their power, have not given any share to Dashrath in the suit property at No. 1/A. They have deliberately shown that defendants are the only legal-heirs of propositus Shiva, thus, excluding Dashrath. They have filed false affidavit before the revenue authorities as well as given false information about the legal-heirs of deceased Shiva. Plaintiffs being illiterate and working as laborers were not aware as to how and where objection should be taken against the entries in the records of the suit properties. However, defendants have kept the plaintiffs in dark and tried to usurp the suit properties. Defendants have deliberately kept the suit properties in their possession and are enjoying the same. They have not given any shares or benefits in the agricultural suit properties at Sr. No. 1-A to the plaintiffs.

c) Plaintiffs demanded partition of the suit properties and share of Dashrath to be separated by sending the legal notice on 04/05/2018. Defendants did not reply to the notice, despite the receipt of the notice. They neglected to subject the suit properties to partition. Hence, plaintiffs are constrained to institute the present suit for partition and separate possession of shares. Relief of mesne

profits is also claimed. Defendants were residing in Gat No. 465 by raising construction in it. There is no need for defendants to undertake any new type of construction. Defendants have deliberately started construction in the suit property at No. 1/B so as to deprive the plaintiffs from the rights and interests in it. They are collecting building materials and others articles for the purpose of construction. They are trying to construct in such a way for their convenience and which might affect the plaintiffs adversely as they would be restricted to an enclosed area. Hence, plaintiffs are constrained to claim the relief of perpetual injunction. Time would be required to take the suit to reach to its conclusion. Hence, plaintiffs are claiming interim injunction so as to restrain defendants from making any construction in the suit properties at Sr. No.1/B. Thus, plaintiffs also seek the relief of preventing the defendants so as to restrain them from ousting the plaintiffs from the suit property at Sr. No. 1/A. Thus, this is the present application.

Case of the Defendants.

03. Defendant No. 1 and 3 have resisted the present application by filing their say at Exh. No. 14. They have vehemently denied all the contentions raised by plaintiffs and additionally stated that defendant No. 1 and Shiva were legally married and defendant No. 2 and 3 are their children. Defendant No. 1 has died on 05/09/2015 during the pendency of the present suit. Shiva died in the year 1995. Shiva was never married to Aakkatai as per Hindu rites and customs. Thus, Aakkatai is not legally wedded wife of Shiva. Dasharath was never born to plaintiff No. 1 and Shiva. Thus,

plaintiffs are not the successors of Shiva. Hence, they are not coparceners. Plaintiff No. 1 was married at Randivewadi. Plaintiff No. 1 has not dissolved his earlier marriage as per law. Hence, she is not legally wedded wife of deceased Dasharath and she could not get any rights in the suit properties.

b) Defendants have received the suit property at No. 1/A as per the family settlement, hence, the defendants are the owners and possessors of the suit properties. The suit property at No. 1/A are not subject to the partition with respect to co-sharers. Although, the revenue records reflect the name of defendant No. 2 and 3, however, the said agricultural properties are reserved for the maintenance of deceased Gangubai and the income out of the agricultural suit properties at Sr. No. 1/A are incurred for the medical expenses, clothes and basic needs of the deceased defendant No. 1. Thus, defendant No. 2 and 3 do not get any benefits out of the agricultural suit properties at Sr. No. 1/A.

c) The house properties at Sr. No. 1/B stands in the name of Shiva. After the death of Shiva in the year 1995, suit properties at Sr. No. 1/B, 1 i.e. the C.S No. 730 was transferred to the name of Gangubai and defendant No. 2 and while, the C.S No. 733 still reflects the name of Shiva. The house properties are adjacent to each other. It belongs to the defendants. Plaintiff No. 1 reside at Pimpalgaon with her daughters i.e. plaintiff No. 2 and 3. She was not having any residence in the village. Defendants and plaintiffs were having cordial relationship. Hence, defendant No. 2 and 3 allowed plaintiffs to reside in grampanchayat property (hereinafter referred to as 'G.P') No. 195-F, towards the west, in an area of 15x30 feet

long and wide by way of agreement. Defendant No. 2 and 3 did this, considering the difficulty of plaintiffs of residence and maintained their stand that ownership rights and interests in this house property was never transferred to plaintiff No. 1.

d) Suit property 1-B, 1 and 2 (C.S No. 730 and 733) being adjacent to each other were allotted G.P No. 195. Defendants were residing in the remaining half share of the house suit properties. Hence, G.P No. 195 is divided into the three parts. G.P No. 195 F-1 is allotted to defendant No. 3, while F-2 is allotted to defendant No. 2 and F-3 is allotted to plaintiff No. 1. Parties are in possession of the respective parts allotted to them. Thus, plaintiffs are residing in G.P No. 195 F-3 by raising house structure in it.

e) The said arrangement is reflected in the grampanchayat assessment records. Defendant No. 3 is residing in G.P No. 195 F-1 since in the year 1997 and is residing in an area of 15x10 feet in a house made of soil and bricks. Remaining open space is utilized for cattle and keeping other necessary articles. Plaintiffs never took the objection for the above arrangement. Both the plaintiffs and defendants pay the assessment taxes, dues as per their possession. But plaintiffs are now trying to take dis-advantages of the defendants' civility and they are trying to assert their rights in the suit properties. Defendants are not causing any change in the nature of the suit properties. Rather, there is no ground to sustain the present interim application of the plaintiffs and is liable to be rejected.

04. In view of the rival pleadings in the interim injunction

application and say to it as well as documents placed on record by both the parties and keeping in mind the rival submissions of the parties, following points arise for my determination for which findings are recorded along with reasons.

Sr. No.	Points.	Findings.
1.	Whether plaintiffs prove the prima facie case in their favour?	No.
2.	Whether balance of convenience lies in favour of the plaintiffs?	No.
3.	Whether irreparable loss or damage would be caused to the plaintiffs, if the interim injunction is not granted in favour of the plaintiffs?	No.
4.	What order ?	Application is rejected.

05. Documents placed on record by plaintiffs are as follows

Sr. No.	Documents.	Exhibit. Nos.
1 to 6.	Certified copy of village form No. 7 and 12 of Gat No. 395, 464, 470, 485, 492 and 495.	Exh. No. 03
7.	Certified copy of Village form No. 8/A of खाता क्र. 1191.	
8 to 9.	Certified copy of property-card in R.S. No. 730 and 733.	
10 & 11	Photographs.	
12.	Office copy of the notice sent to the defendants	

1 to 4.	Receipt of assessment, taxes paid by plaintiff No. 1., photo copy of the Aadhar-card, Ration-card and Election Identity Card of plaintiff No. 1.	Exh. No. 25
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5 to 6	Photo copy of death certificate of Dasharath and Shiva.	
7.	Village form No. 8 standing in the name of plaintiff No. 1.	

06. Following other documents are placed on record by the defendants.

Sr. No.	Documents.	Exhibits Nos.
1.	Assessment extract of Grampanchayat property No. 195 F-1.	Exh. 15.
2.	Certified copy of resolution monthly dtd. 23/03/1997 bearing No. 111/2014.	
3 to 5.	Hand-sketch map before Gram Panchayat Pimpalgaon khurd of G.P No. 195 F-12, 3.	
6.	Receipts of payment of taxes dues.	
7 to 8.	Photos.	

1.	Assessment extract of G.P No. 195 F-2.	Exh. No. 20.
1 & 2.	Photographs	Exh. No. 22.
3.	Photo copy of payment of the assessment, dues.	
4.	Photo copy of non-cognizable report.	

1.	Photographs	Exh. No. 27
2.	Receipts of the payment assessment, dues, taxes to the Grampanchayat Pimpalgaon khurd.	

REASONS**As to points No.1 to 5-**

07. All the points are discussed together as it involves the discussion about the same facts and the documents. Both the learned advocate of the plaintiffs and defendants have submitted on the lines of the pleadings and documents placed on record during arguments.

08. On minute analysis of the rival contention of both the parties, it is clear that, relationship between the parties are vehemently disputed. It is the contention of the plaintiffs that, the propositus Shiva had married twice with Aakkatai and then, Gangubai. On the other hand, defendants disputed the relationship of Aakkatai with Shiva. The present plaintiffs are related to Aakkatai through her son i.e. Dashrath. These oral pleadings are not much helpful for arriving at the inference, hence, the documents placed on record by either of the parties needs to be looked into.

09. On perusal of the documents placed on record by the plaintiffs, specially below Exh. No. 25/02, plaintiffs have placed on record photocopy of the identification card i.e. Aadhar-card issued by the Unique Identification Authority of India (UIDAI) of plaintiff No. 1. She has been referred to as 'Babutai Dashrath Telvekar' in this. Similarly at Exh. No. 25/03, identity card issued by Election Commission of India (in short, 'E.C.I') also reflects the name of plaintiff No. 1 as 'Babutai Dashrath Telvekar' and the name of husband is reflected as 'Dashrath Telvekar' and this identity card is issued on 31/08/2007. Another identity card issued by E.C.I is placed on record at Exh No. 25/05. This identity card is issued on 15/11/1994 and

similar contents appears on it as it appears on the identity card on Exh. No. 25/03 and the name of husband of plaintiff No. 1 is reflected as 'Dashrath'. Thus, from these identity cards, it appears that, the relationship of plaintiff No. 1 with Dashrath is that of wife(now widow).

10. Dashrath is reported to have died on 06/06/1986. The death certificate is placed on record at Exh. No. 25/06 and the name is reflected as 'Dashrath Shiva Telvekar'. However, there is no clarity as to whether 'Shiva' is the name of the father or mother or the husband of 'Dashrath'. However, considering that 'Dashrath' was a male, 'Shiva Telvekar' would be his father. However, the date on which certificate was issued is missing in it. However, defendants have not taken any specific objection to the death certificate. Neither, there is any contention raised by defendants that, death certificate is false or bogus, nor, there is any denial from defendants. Hence, from the photocopy of the death certificate of Dashrath, it can be said that, prima-facie, Dashrath is son of Shiva.

11. Defendants have raised the protest that, marriage of plaintiff No. 1 is void with Dashrath as she was married to someone else and without dissolving her earlier marriage, she entered into marriage with Dashrath. Now, this contention of defendant is unsubstantiated as defendants have not mentioned the name of person with whom plaintiff No. 1 was married to, prior to that of marriage with Dashrath or any particulars about her first marriage is mentioned. Defendants have also raised similar protest about marriage of Akkatai with Shiva. But, there is no particulars of the same and it is also

unsubstantiated. Even, there is no objection or complaint made by the defendants with regard to the identity cards issued by the Government authorities, especially, since the year 1994, when the election card is being issued, wherein the name of husband of plaintiff No. 1 is reflected as 'Dashrath'. Thus, these contention of defendants is not tenable and the relationship of plaintiff No.1 and Dashrath can be said to be that of wife and husband and then, that of Dashrath to that of Shiva can be said to that of son and father. Admittedly, plaintiff No.2 and 3 are daughters of plaintiff No.1. Thus, plaintiff No.1 becomes widow and plaintiff No.2 and 3 become daughters of predeceased son (Dashrath) of Shiva(reported to have died on 27/10/1995) .

12. The discussion so far, reflects the prima facie observation of the relationship between plaintiff No. 1 and propositus Shiva. Both the parties are liberty to adduce evidence in support of their contention and the same can be decided in detail during trial. But for the time being i.e. for the adjudication of the interim application, prima facie inference is drawn about the relationship between the plaintiffs and propositus, Shiva. But, it is pertinent to be noted, that there is nothing on record to infer about the first marriage or first wife of Shiva. But, considering the settled position of law u/s. 16 of Hindu Marriage Act, 1955, even though it is considered that, Aakkatai was first wife and Gangubai was second wife, children of both the marriages are not to be deprived of their rights in the ancestral properties falling to the shares of their parents. Hence, the successors of Shiva i.e. plaintiff No. 2 and 3 and defendant No. 2 and 3 and 1-A are co-parceners. It is the settled position of law that, unless partition is shown, it is presumed that, very Hindu Family is joint and undivided. It is joint in food, worship and

residence and if there are ancestral or joint family properties, then, coparceners are having joint interests in it. One of the facets of coparcenership is to have joint ownership and possession. Thus, it can be said that, plaintiff No. 2 and 3 have joint rights and interests with defendants No. 1-A, 2 and 3 in the ancestral properties.

Agricultural suit properties- paragraph No. 1-A of the interim application.

13. Now, the suit properties consist of both -immovable agricultural properties as well as house properties. Firstly, dealing with the contention of agricultural suit properties, on perusal of the village form No. 7 and 12 below Exh. No. 3/1 to 3/6, it appears that, name of defendant No. 2 and 3 are reflected on it. Plaintiffs have not produced on record the mutation entries, using which the name of defendant No. 2 and 3 were brought on record in the village form No. 7 and 12. At Exh No. 3/7, village form No. 8 reflects the names of defendant No. 2 and 3 in the agricultural suit properties. Property-card at Exh. No. 3/8 of C.S. No. 730 reflects that, Shiva having died on 27/10/1995, his legal-heirs i.e. deceased Gangubai (defendant No.1) and defendant No. 2, have come on record. Property-card of C.S. No. 733 at Exh. No. 3/9 reflects the name of Shiva. All these documents do not reflect the name of Aakkatai or Dashrath anywhere. Plaintiffs have contended that, they have not taken any action with regard to this entries as they were illiterate and not aware about names of defendant No. 2 and deceased Gangubai being reflected on the revenue records of the suit properties. However, these entries appears to be long standing entries. But, the credibility of the entries are in question now. However, as it has been discussed earlier, prima-facie it has been inferred that, defendant No.

2, 3 and 1-A and plaintiff No. 2 and 3 are co-parceners. So, it can be said that plaintiff No. 2 and 3 are having rights in the agricultural suit properties.

14. Plaintiffs are seeking interim injunction so as to restrain the defendants from changing the nature or character of the agricultural suit properties. Joint possession of plaintiff No. 2 and 3 can be said to be in existence. However, suit properties appears to be in actual possession of defendant No. 2 and 3. It also appears that, they are cultivating the agricultural suit properties as per Village Form No. 7 and 12 at Exh. No. 3-1 to 3-6. Thus, it appears that, plaintiffs are not in possession of agricultural suit properties at paragraph No. 1-A of the interim application. Plaintiffs have claimed vague interim relief as in the interim application, it is nowhere reflected that, how defendants are trying to make any changes in the agricultural suit properties. Hence, it appears that, with regard to the agricultural suit properties at paragraph No. 1-A of the interim application, there is no specific relief sought by the plaintiffs.

House suit properties, paragraph No. 1-B of the interim application.

15. It has been stated by the defendants in the written statement that, C.S. No. 730 and 733 are adjacent to each other and it was numbered as G.P No. 195, (paragraph No. 17(e), page No. 6 of the written statement below Exh. No. 14). Now, defendants have mentioned in the written statement below Exh. No. 14, that, G.P No. 195 have been distributed between plaintiff No. 1 and defendant No. 2 and 3 by way of understanding/ family settlement before the Gram

Panchayat. Now, this understanding or resolution passed by Gram Panchayat, Pimpalgaon is placed on record below Exh. No. 15/2. It reflects the same contentions as raised by defendants. It appears that, the plaintiff No. 1 is allotted an area of 15x30 feet and G.P No. 195 towards the western side. Defendants have also provided boundaries of these parts. This is also supported by the handmade rough sketch below Exh. No. 15/ 3 to 5. These materials fortify the case of the defendants. Now, plaintiffs have not mentioned about this arrangement in her interim application. Rather, plaintiffs have addressed house properties with old number i.e. C.S. No. 733 and 730. It is the contention of plaintiffs that, they resided in house properties at paragraph No.1(B) i.e. C.S No. 733 and 730. However, plaintiffs have not substantiated this contention with any documentary evidence. Mere pleading without any support of documents would not be helpful to the plaintiffs. Per-contra, defendants have substantiated this contention of the arrangement of residence in G.P No. 195 between plaintiff No. 1 and defendant No. 2 and 3 by the resolution and the handmade map or sketch placed on record of Gram Panchayat. Thus, the contention of defendants are more probable. Thus, it appears that, plaintiff No. 1 is residing in G.P No. 195/F-3. Defendant No. 3 is residing in G.P No. 195 F-1 and defendant No. 2 in 195 F-2. Defendants have substantiated this contention with receipts of payment of assessments, taxes, dues (Exh. No. 15/6). They have also substantiated the same with the help of assessment extracts (Exh. No. 20/ 1 and 15/01). Thus, it appears that, the arrangement as per resolution before Gram Panchayat is in place. Rather, plaintiffs have also not denied the arrangement expressly in the present matter. Instead of that, plaintiffs have placed on record receipt of payment of

assessments, taxes below Exh. No. 25/ 01. Thus, it appears that, this arrangement is also accepted by the plaintiffs. This act as an estoppel against the plaintiffs.

16. Now, the question arises as to whether defendants are trying to make any changes in the house suit properties. Plaintiffs have instituted the present suit claiming the relief of partition and separate possession of shares and perpetual injunction. Plaintiffs are asserting rights in the house suit properties. Admittedly, house suit properties belonged to propositus - Shiva. There is dispute with regard to the relationship between plaintiffs and Dashrath and for that matter, Aakkatai with Shiva and plaintiffs and defendants inter-se. But, for the sake of present interim application prima-facie, it has been observed that, Dashrath was son of Shiva and plaintiff No. 1 is widow of Dashrath. Thus, plaintiff No. 2 and 3 are daughters of Dashrath. Now, whether arrangement which has been stated in resolution of Gram Panchayat Pimpalgaon can be said to be a family arrangement or partition is not the subject matter of the present application but it can be dealt in detail during trial. But, it appears that, plaintiff No. 1 and defendant No. 2 and 3 are residing as per the arrangement in the respective parts i.e. G.P bearing No. 195 F-, 3, 2 and 1 respectively. Thus, parties are residing separately. Now, plaintiffs allege that defendants are constructing in the house suit properties. Per-contra defendants have stated that, plaintiff No. 1 is raising construction in the G.P No. 195 F-3. Now, these are counter allegations.

17. Both the parties have placed on record various photographs in support of their contentions. At Exh. No. 3, Sr. No. 10

and 12, plaintiffs have placed photographs wherein, it is being reflected that, some cement bricks or tin sheets are kept. However, nothing can be inferred from these photographs. Defendants have also substantiated this contention by way of photograph below Exh. No. 15 Sr. No. 7 and 8. It can be seen that, the cement, bricks and tin-sheet are lying on the ground. On further perusal of the documents placed on record by the defendants, it appears that, photographs placed on record below Exh. No. 22, a structure is being raised with the help of cement, bricks. They have also placed on record report of Non-Cognizable offence (hereinafter referred to as 'N.C.R', for the sake of brevity) below Exh. No. 20, Sr. No. 4, wherein it reflects that, defendant No. 2. is the informant and plaintiffs are alleged to have abused and threatened defendant No.2 while plaintiffs were trying to build a structure. Thus, from these photographs and the N.C.R, it appears that it is the plaintiffs who are trying to construct in the house suit properties. Nature of the construction is not clear but it appears that, to be single room. From the photograph at Exh. No. 27/ 1, it appears that, the construction is completed. So, in these circumstances, the conduct of the plaintiffs is to be noted.

18. Defendants have admitted possession of the plaintiffs in G.P bearing No. 195/ F-3. They have also stated in the written statement that, they never intended or never tried to oust the plaintiffs from the suit properties. Plaintiffs contend that defendants were residing in Gat No. 465 by raising construction in it, thus, there is no need for defendants to undertake any new type of construction. But these contentions are unsubstantiated. As discussed above, it is clear that

plaintiffs are residing in the house suit properties i.e. G.P bearing No. 195/ F-3. From the photographs and the N.C.R, it appears that it is the plaintiffs who have brought cement, bricks, stone and tin-shed for the purpose of construction in/over the house suit properties and complete the construction as well. Thus, it appears that, the contention of plaintiffs are unsubstantiated. There is no other materials to show that, plaintiffs are being ousted from the house suit properties i.e. G.P No. 195 F-3. They have not pleaded or shown as to how and what type of construction, defendant No. 2 and 3 were undertaking. Hence, in cumulative analysis of the above discussion, there appears to be no prima-facie case in favour of plaintiffs with regard to this. Consequently, the contention of balance of convenience and irreparable loss or damage to the suit properties falls to the grounds and can be said to be lacking. Accordingly, point No. 1 to 3 are answered in the negative and in answer to point No. 4, following order is passed. There is no special reasons to impose costs of this application.

ORDER

1. Application is rejected.

2. Costs in cause.

Date : 19/01/2022
Place : Kagal.

(Katkar Vijaya N.S.)
Jt. Civil Judge, Junior Division, Kagal.