



R.C.S. No. 117/2022

Sunita Shivaji Patil Vs. Laxman Ramchandra Genge
etc.08

CNR - MHKO130010342022

ORDER PASSED BELOW EXH. 05

(Dt. 21/02/2023)

01. This is the interim application of the plaintiff filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure (In short C.P.C.) with specific prayer to restrain defendant No. 2 from interfering & obstructing in the joint possession of the plaintiff in the suit property and to restrain defendant No. 1 from alienating the suit property in any form to anyone till final disposal of the suit.

Brief facts of the plaintiff case is as under:-

02. The following properties will hereinafter be referred as the suit properties-

(A)

Sr. No.	Village	Gat. No.	Total Area
1.	Mouje Kardyal, Tal. Kagal.	324	0H.59 R.

(B)

Sr. No.	Village	Gat. No.	Total Area
1.	Mouje Metake, Tal. Kagal.	374	3H.48 R.

(C)

Sr. No.	Village	House property No.	Total Area
1.	Mouje Kardyal, Tal. Kagal.	45 & 44	104.52 Sq. mtr. and with 112.97 Sq.mtr. Padsar

			and open space.
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03. As per the plaintiff, these properties are suit properties. Defendant No. 1 is a father of the plaintiff. Defendant No. 2 is her real brother & defendant No. 3 is her real married sister. Rest of the defendants are her paternal relatives. It is submitted that, the predecessor of the defendants family i.e. Ramu during his life time has effected partition of the suit properties and of the other properties. In view of that partition, mutation entry No. 1201 dtd. 26/03/1976 was sanctioned. Accordingly name of each person of their family has entered to the revenue record of the concerned properties. Since last 47 years after the partition, each one is in his/her possession.

04. As per the plaintiff, the suit property 1-B is purchased by Ramu i.e. father of defendant No. 1 from Shri. Padalkar and after the demise of Ramu name of defendants No. 1 to 8 were entered to the said suit property. It is submitted that, out of the suit properties, bearing Gat No. 59 is alienated by defendant No. 1 in favour of his grand-son Sujal and property bearing Gat No. 204 was sold out to bear expenses of malans (wife of defendant No. 1) illness.

05. It is the case of the plaintiff that, after the alienation of property to Sujal by defendant No. 1, dispute was arose in between the plaintiff & defendant No. 1 and at that time defendant No. 1 has executed one registered will bearing registration No. 86/2021 in favour of defendant No. 1. Defendant No. 1 has called the plaintiff to reside at Kardyal. The defendant has told the plaintiff to construct the house in suit property at Gat No. 374. The defendant No. 1 is addicted to luxuries life style. He has expended all the money of the plaintiff for satisfying his luxuries needs.

06. The plaintiff has submitted that, defendant No. 1 has alienated the suit property 1-B i.e. in Gat No. 374 admeasuring 0.20R in favour of defendant No. 9 but defendant No. 9 was never in possession of that suit property. The said sale-deed was executed without any legal & valid reason. The plaintiff do not wish to keep her share in common with rest of the defendants in above suit properties. Thus, as she is having apprehension of obstruction at the hands of defendant No. 2 and alienation at the hands of defendant No. 1, current application is filed.

Brief facts of defendants No. 1, 3 to 5:-

07. The defendants No. 1, 3 to 5 have submitted their say at Exh. No. 31 and defendant No. 9 has submitted his say at Exh. No. 32. These defendants have contested the current application. It is submitted by these defendants that, genealogy as submitted by the plaintiff is inadequate. The plaintiff is second daughter of defendant No. 1. Initially her marriage was performed with Vishwas Patil of Danoli in the year 1998 but divorce was taken place between them. Defendant N. 1 has incurred Rs. 3,00,000 as expenses for the first marriage of the plaintiff. The plaintiff is having two daughters Vanita & Aishwaraya out of first marriage. The second marriage of the plaintiff is performed with Shivaji Patil of Hanbarwadi, tal. Bhudargad in the year 2003. The defendant No. 1 has performed marriage of Aishwaraya with his own expenses. Defendant No. 1 has never told to the plaintiff to sold her properties at Hanbarwadi. He never has called the plaintiff for residing at Kardyal. The defendant No. 1 is good person and has addicted to no vices. The defendant has taken every care of the plaintiff during her childhood. Therefore, the plaintiff is now addicted to the luxuries life style. The plaintiff is not residing with her second husband. She is residing separately at

Hanbarwadi, Tal. Kagal.

08. It is submitted by the defendants that, the property at Gat No. 324 & 374 & house property No. 44 are not ancestral. Therefore, the plaintiff is not entitled to obtain any share in the said suit properties. Defendant No. 2 who is son of defendant No. 1 is residing separately from his father. The suit is filed by the plaintiff in collusion with defendant No. 2. Defendant No. 1 is old aged person. The plaintiff & defendant No. 1 have never taken care of defendant No. 1. They never looked upon to the basic needs of their father.

09. It is submitted by the defendants that, defendant No. 1 has alienated property admeasuring 0.20R out of Gat No. 374 situated at Metake, Tal. Kagal for his own expenses in favour of defendant No. 9 for consideration of Rs. 14,00,000/- by way of registered sale-deed No. 5120/2022 dtd. 04/03/2022. The said sale-deed is binding on the share of the plaintiff and defendants No. 2 & 3. The defendant No. 3 has consented for the execution of captioned sale-deed. The property admeasuring 0.20R is given to the possession of defendant No. 9 at the time of execution of sale-deed. Therefore, the plaintiff has no right to seek any relief against these defendants. The plaintiff was never in possession of the suit properties. Her name is not there to the revenue record of the suit properties. The plaintiff has not sought any relief against the registered sale-deed No. 5120/2022. Therefore, she has not entitled to any relief against the defendant No. 9. Thus, in the backdrop of these factual aspects, the defendants have prayed to reject the application.

Brief facts of the defendant No. 2:-

10. Defendant No. 2 vide say at Exh. No. 54 has submitted

his consent to the interim application and to the suit. This defendant has specifically admitted all the pleadings made in the interim application as well as in the suit and he has submitted to allow the current application.

11. Heard Advocate Shri. A.J. Desai for the plaintiff. Advocate Shri. A.P. Patil for the defendants No. 1 & 9 and Advocate Shri. S.K. Patil for defendant No. 2.

12. On the basis of rival pleadings of both the parties following points are arises for my determination and my findings with respect to the same is as under:-

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaintiff has made out <i>prima-facie</i> case?	In the Partly Affirmative.
2.	Whether balance of convenience lies in favour of the plaintiff?	In the Partly Affirmative.
3.	Whether irreparable loss will be caused to the plaintiff, if remedy of temporary injunction is refused?	In the Partly Affirmative.
4.	What order?	As per final order.

REASONS

As to points No. 1 to 3:-

13. All the points are interlinked with each other. Thus, to avoid repetition of facts, they are discussed together.

14. It is the specific case of the plaintiff that, the suit properties are ancestral. Per contra, the defendants have denied the same. It is the case of the defendants that suit properties are self-acquired properties of defendant No. 1. In the rivalry of all these

submissions on both the sides, perusal of the certified copy of mutation entry No. 1201, it appears that, initially the properties were belonging to Ramu Genge. He had partitioned the said properties between his heirs. Careful perusal of the mutation entry denotes that, the suit properties are mentioned in it by their revisional survey number, which accordingly tally with the consolidation extract submitted by the plaintiff along with the lists of documents. Thus, there is no doubt to prima-facie hold that the suit properties are ancestral.

15. The plaintiff is come with the specific case that, defendants are obstructing in her possession over the suit properties. No doubt, it appears that, defendant No. 1 has executed one registered will in respect of property bearing Gat No. 374 in favour of the plaintiff. The defendant No. 1 is alive. It is settled law that, effect of will has to be given after the death of testator. Thus, even though, will is executed effect of it can not be given in the life time of defendant No. 1, who is testator of the will.

16. The plaintiff is pleading about her joint possession over the suit properties. No doubt, the defendants have denied the factum of plaintiffs possession over the suit property. In such a situation, perusal of the 7/12 extract of the suit properties, it appears that, name of defendant No. 1 is there to the suit properties. Name of the defendant No. 9 is also there to the suit property at 1-B i.e. Gat No. 374, but nowhere name of the plaintiff is appearing to the revenue record of the suit properties.

17. Indeed, this suit itself is filed for partition and for determination of the shares. At the moment, the plaintiff has not filed any sufficient and prima-facie evidence to show her possession over the suit properties. The plaintiff has pleaded that, she has

constructed house in Gat No. 374, to substantiate the same pleading she has filed on record photographs of the under construction house, but it is hard to believe at this stage that, under construction of the house is going on in the property at Gat No. 374.

18. The plaintiff has filed on record supporting affidavits of 04 witnesses, Ananda Tambekar (Exh. No. 46), Dinkar Tambekar (Exh. No. 47), Shivaji Genge (Exh. No. 48) and plaintiff herself at (Exh. No. 49) amongst these witnesses, affidavit of Ananda Tambekar reflects that, he is cultivating the suit property in Gat No. 374 for the plaintiff. He further has submitted that, the sugarcane i.e. planted in the property at Gat No. 374 is registered with Hamidwada Sugar Factory. Rest of the witnesses on behalf of the plaintiff have also deposed that, the plaintiff has cultivated crop of sugarcane in the suit properties. But it is pertinent to note that, nowhere in the entire plaint as well as in the interim application, it is the pleading of the plaintiff that, she has cultivated the crop of sugarcane in the suit property. Nowhere in the entire plaint as well as in the interim application the plaintiff has pleaded that, the plaintiff is cultivating the suit land at the hands of Ananda Tambekar. The plaint & interim application itself are missing those important pleadings.

19. Exactly to counter this, the defendants have filed on record supportive affidavits of three witnesses, those are Vitthal Genge (Exh.No. 50), Vijay Tambekar (Exh. No. 51) & Uttam Genge (Exh. No. 52). Amongst all these witnesses of the defendants, Uttam Genge is one of the defendant to the suit. All these witnesses have deposed that, the defendant No. 1 is in the separate possession of property bearing Gat No. 374. The defendant No. 9 has cultivated sugarcane of the breed of 86012 in the property at Gat No. 374.

Considering the affidavits of those witnesses and 7/12 extract of the suit properties, one thing prima-facie makes it clear that, name of defendants No. 1 & 9 are there to the property in Gat No. 374. Thus, at this juncture, except oral pleading of the plaintiff, there is no documentary evidence led by her to show her prima-facie possession over the suit properties. She has prima-facie failed to prove that, she is taking crop of sugarcane in the suit properties.

20. Even though the plaintiff has claimed interim relief of temporary injunction against defendant No. 2 for restraining him in causing obstruction & interference in her possession over the suit property, it appears that, defendant No. 2 through his say has consented to allow the interim application, which directly implies that there is collusion of the plaintiff & defendant No. 2 to the current suit as well as to the interim application. Apart from that, no final relief of injunction is claimed by the plaintiff against defendant No. 2 in the final prayer clause of the plaint. The plaintiff has not pleaded in the plaint as well as in the interim application that, what kind of obstruction has made by defendant No. 2 in her possession over the suit property. These grounds are necessary because this defendant No. 2 has submits his consent for allowing the interim application.

21. The plaintiff has again sought another relief of restriction of alienation against the defendant No. 1 of the suit properties. No doubt, it is come on record that, suit properties are ancestral. The defendant No. 1 has alienated one of the portion in the suit property bearing Gat No. 374 in favour of defendant No. 9. The plaintiff is having apprehension of the alienation at the hands of defendant No. 1. It appears that, in the apprehension of alienation of the suit properties, she has issued public notice in the daily

newspaper of “Pudhari” dtd. 21/01/2022, to which defendant No. 1 has given his reply by notice dtd. 09/02/2022 through his advocate.

22. Even though such a factual aspects are come on record, defendant No. 1 has not denied his relation with the plaintiff. Thus, as the relation between the parties are admitted, the plaintiff being daughter of defendant No. 1 will definitely entitled to have some share in the suit properties. But during pendency of the suit if defendant No. 1 succeeds to alienate the suit property in any form to anyone, then in future it may create complications in the suit & the suit will then unnecessarily will prolonged. In the result, it will be better to restrain defendant No. 1 from alienating the suit properties till final disposal of the suit. Thus, on the basis of these factual aspects, I answered points No. 1 to 3 accordingly & in answer to point No. 4, following order is passed:-

ORDER

1. The application (Exh. 5) is partly allowed.
2. Defendant No. 1 is hereby restrained from making any kind of alienation in respect of the suit properties to anyone till final disposal of the suit.
3. Prayer pertaining to obstruction & interference at the hands of defendant No. 2 over the suit property is rejected.
4. Cost in cause.

Kagal.
Date: 21/02/2023.

(A. B. Jawale)
Jt. Civil Judge Junior Division,
Kagal.