

**R.C.S.No. 140/2022**

Smt. Sharubai Mhalungkar etc. Vs. Mahadev Repe etc.

CNR - MHKO130011252022**ORDER PASSED BELOW EXH.05****(Dt. 10/08/2023)**

1. This application is filed by the plaintiffs' against defendants, under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure (in short 'CPC').

2. According to the plaintiffs', there are following agricultural properties situated at Mouje Choundal, Tal Kagal, Dist. Kolhapur.

| Sr. No. | Gat No. | Area H. R. | Rupaiye Paise |
|----------------|----------------|-----------------------|--------------------------|
| 1. | 456 | 0.03.00 | 0.03 |
| 2. | 472 | 0.07.10 | 7.10 |
| 3. | 475 | 0.06.10 | 6.10 |
| 4. | 120 | 0.08.00 | 0.03 |
| 5. | 378 | 2.29.00 | 2.37 |
| 6. | 393/A | 0.31.30 | 2.57 |
| 7. | 393/B | 0.55.40 | 4.62 |
| 8. | 373 | 0.28.00 | 1.69 |
| 9. | 385 | 0.83.00 | 8.51 |
| 10. | 445 | 0.27.50 | 2.86 |
| 11. | 272 | 0.80.00 | 0.06 |
| 12. | 61 | 4.18.90 | 13.12 |
| 13. | 240 | 0.26.70 | 0.81 |

| | | | |
|-----|-------|---------|------|
| 14. | 152/A | 0.54.70 | 7.03 |
| 15. | 152/B | 1.45.00 | 2.50 |
| 16. | 154 | 0.30.00 | 0.44 |
| 17. | 221 | 0.37.00 | 1.69 |
| 18. | 343 | 0.15.10 | 0.96 |

Above suit properties are well referred in the plaint is subject matter of suit. (hereinafter referred as “suit properties”). The gist of application is to restrain the defendants from alienating the suit property pending the suit.

3. Defendant no. 1 to 3, 4(A) to 4(D) have filed their W.S./say at Exh.14 by denying the contents of Exh.5.

4. To avoid repetition of facts, brief facts of application and written say are referred in the argument of learned advocates of respective parties.

5. Heard Smt. A.S.Mandlik learned advocate appearing on behalf of plaintiffs' and Shri. S.S.Kestikar learned advocate appearing on behalf of defendant no. 1 to 3, 4(A) to 4(D). From the pleading and arguments of learned Advocates of parties with documents on record, following points arise for determination, and this Court, recorded the reasons with finding as stated below :-

| | <u>POINTS</u> | | <u>FINDINGS</u> |
|----|--|----|------------------------|
| 1. | Whether prima facie case lies in favour of plaintiffs' ? | :- |Partly Yes. |
| 2. | Whether balance of convenience lies in favour of plaintiffs' ? | :- |Partly Yes. |

| | | | |
|----|--|----|-------------------------------|
| 3. | Whether plaintiffs' would suffer irreparable loss if injunction is refused ? | :- |Partly Yes. |
| 4. | What order? | :- | Injunction Partly Allowed. |

:- DOCUMENTS :-

6. The plaintiffs relied on following documents filed at Exh.3, 16, 20 which includes 7/12 extracts, revenue extracts, consolidation extracts, diary entries, statement made before Special Land Acquisition Officer, written say, Order in RTS appeal no.47/2022 etc.

7. The defendant no. 1 to 3 and 4(A) to 4(D) have relied on documents filed at Exh. 18 which includes 7/12 extracts etc. as well documents filed by the plaintiffs.

Facts and Argument on behalf of plaintiffs:-

8. Learned advocate for the plaintiffs' relying on the documents filed below Exh. 3, 16 & 20 submitted & argued that, plaintiffs' and defendants' are successor of deceased Ganu Repe. The plaintiffs' have described the genealogy in their plaint para no. 2.

9. According to plaintiffs, suit property is ancestral property of their predecessor Ganu Repe and that property is succeeded by his four sons Bhagoji, Hari, Krushna and Raghu and entries in that regard entered in 7/12 extract. It is averred that, plaintiffs' and defendants' are cultivating the suit property as per their convenience and yet partition is not effected between them. It is averred that, they have their 1/3rd share in the suit property. It is submitted that, son of Ganu Repe i.e. Raghu Repe died unmarried on 04/04/1981. After death deceased Raghu predecessor of defendants Bhagoji Repe

made statement before land acquisition officer on 26/01/1985 that Tukaram Repe possessed 4 H. 78.03 R. property. It is submitted that, deceased Bhagoji kept the share of his deceased brother Raghu. According to applicant, the share of deceased Raghu is not allotted equally within his 3 brothers and these facts was within knowledge of predecessor of Bhagoji.

10. It is averred that, mutation entry no. 635 is executed on 11/12/1974, and after the death of Bhagoji his LR's refused to hand over the share of deceased Raghu. It is averred that, during month of December-2021, plaintiffs' requested the share of deceased Raghu from the defendants. Further, time to time defendants avoided and lastly in the month of June-2022 refused to hand over the share to the plaintiffs.

11. According to plaintiffs', defendants are in intention to alienate the suit property. It is averred that, if the defendants alienated the suit property that may create complication in the suit resulting into multiplicity of proceeding. Learned advocate of plaintiffs' relying on documents and 7/12 extracts, revenue extracts, consolidation extracts, diary entries, and pending litigation within parties before Revenue Officer argued that, they have challenged order passed in favour of defendant no. 4 in respect to suit Gat no.272 and Gat no. 61. It is averred that, the defendants in their W.S. expressed that, they will not alienate the suit property, under such circumstances, if injunction granted no loss or prejudice will cause to the defendants. Hence, urged to allow the application as plaintiffs' have prima facie case.

Facts & Argument on behalf of Defendant no. 1 to 3 & 4(A) to 4(D) :-

12. Contrary, learned advocate of defendant no. 1 to 3 & 4(A) to 4(D) filed their W.S. at Exh.14 contending that, partitioned is effected between predecessor of Bhagoji, Raghu and his nephews during year-1974. The details of that partition has narrated in W.S. para no. 6. Further, intentionally 1 Acre land entries is made in the name of one another similar name person i.e. Tukaram Krushna Repe (Babucha). It is averred that, Gat no. 272 formerly known as R.S.No.56/4 is purchased by Bhagoji vide deed no. 224/1958 for consideration of Rs.400/- from Aavba Patil and he became absolute owner of suit property Gat no. 272. It is averred that, due to mistake in the entries the name of Tukaram is indicated to the extent of half share in the 7/12 extract. Hence, rectification application was made and same is allowed by order of revenue authority.

13. It is argued that, further predecessor of these defendants Bhagoji was sole tenant to Gat no. 61 formerly known as R.S.No.8 owned by Shrimant Jaysingrao Ghatage and after death of Bhagoji, his successor are in possession of that Gat number. It is averred that, in that property also wrong entries of Tukaram and Sakharam were inserted and rectification application to that effect is allowed vide application no. 09/2019 by Revenue Officer. Further, appeal against that applications is preferred by the plaintiffs' vide Revenue Appeal No. 47/2022. In that appeal plaintiffs' have not objected to remove their name from suit property, except Gat no. 61 and 272. Thus, accordingly name of plaintiffs' and defendant no. 5 were removed by the order of Revenue Authority. It is added that, properties referred in W.S. para no. 10 are not added and plaintiffs' have suppressed the material facts. It is averred that, deceased Raghu during partition

year-1974 has not kept any share with him, and allotted his share between his 3 brothers. Further, he died while residing with Bhagoji. It is averred that, defendants are not in intention of alienation as well also not committed or committing any act resulting into damage to the suit property. It is pleaded that, false suit is filed to grab the property of defendant no. 4. Further, relation of plaintiff no. 1 Sharubai is also disputed by these defendants.

14. Learned advocate of these defendants, relying on the documents at above referred exhibits, argued that, due to suppression of material facts with consent of plaintiffs in Revenue Appeal No. 47/2022 to remove their name from suit property (except Gat no. 272 and 61), the plaintiffs are not entitled for relief as claimed. Further, deceased Bhagoji is absolute owner of Gat no. 272 and exclusive tenant of Gat no. 61. Moreover, during partition deceased Raghu allotted his share to the Bhagoji, thus, the plaintiffs' have no rights in that suit property. Further, defendants are not alienating the suit property. Hence, plaintiffs' have no case of injury and they are not entitled for injunction as claimed. Accordingly, argued to reject the application.

:- REASONS :-

As to Points No. 1 to 3 :-

15. Points no. 1 to 3 are interrelated with each other, thus, to skip repetition they are discussed together.

16. Perused the record. Heard the learned advocates of both the parties.

17. From the record prima facie one Gat no. 272 is appearing to be purchased by Bhagoji and for Gat no. 61 he was

tenant. Be it so, plaintiffs' have strongly objected the rectification order of Revenue Office in appeal RTS Appeal no. 47/2022 and have not consented to remove their name from Gat number 272 and 61. Moreover, considering prayer of alienation and contents of W.S. in para 12 it appears that, defendants are not in intention to alienate the property.

18. Except relation of plaintiff No. 1 with Tukaram Repe other genealogy is not seriously disputed. Whether the partition between brothers of Bhagoji effected during year-1974, deceased Raghu partitioned his share amongst his three brothers during his lifetime, exclusive tenancy and ownership of deceased Bhagoji is part required to be dealt at the time of merit of the matter.

19. The plaintiffs' have not claimed any injunction as to obstruction to possession against the defendants. Thus, if injunction as alienation granted no prejudice will cause to the defendants. Rather, if injunction is refused and any third party interest if created in the suit property that amounts to injury to the plaintiffs. Moreover, considering objection in RTS appeal no. 47/2022 to Gat no. 272 and 61, admitted unmarried status of deceased Raghu and share claimed by the plaintiffs in his share, there appears prima facie, case in favour of plaintiffs', and the defendants may not suffer inconvenience, if injunction in respect to alienation and creating third party interest granted against them.

20. So far as prayer clause 'B' at sequence no. 2 in this application is concern, the same relates to final prayer. Thus, it appears a copy paste error, hence, same cannot be consider at this stage. Accordingly, this Court answered the point No. 1 to 3 in the affirmative partly and point No. 4 following order is passed:-

ORDER

1. The application (Exh. 5) is partly allowed.
2. The prayer clause 'B' (at sequence no. 3) in the application is allowed, the defendants are temporarily restrained from alienating the suit properties in any manner as well creating third party interest in the suit property, till the decision of suit.
3. Prayer clause 'B' (at sequence no. 2) next after clause 'A' in the application relates to partition, hence same cannot be consider at this stage.
4. No order as to costs.

Kagal.
Date:- 10/08/2023.

(B. D. Gore)
Civil Judge Junior Division,
Kagal.