



R.C.S.No. 157/2022

Akkatai Babaso Patil Vs. Raghunath Rama Patade

CNR - MHKO130013112022

ORDER PASSED BELOW EXH. 15

(Dt. 27/02/2024)

01. This is the interim application of the defendants filed under Order 39, Rule 1 and 2 of the Code of Civil Procedure (In short C.P.C.) with request to direct the plaintiff to submit bill of sugarcane before the Court and to restrain her from creating any third party interest over the suit property.

Brief facts of the defendants case are as under:-

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

(A)

Sr. No.	Village & Property no.	Admeasuring Area Sq.feet.	Share.
1.	Kasba Sangaon, Tal. Kagal in Gat no. 1019/B	OH. 60R	Full

03. As per the defendants, their predecessor Raghunath was having his ancestral property at Vadade, Tal. Radhanagri, bearing Revisional Survey no. 42, area OH. 88R. The said property was acquired by the Government for the Kalamavadi Dam. These defendants were compensated by giving another land situated at Kasba Sangaon which is the suit property in the current suit.

04. It is submitted by the defendants that, suit property was never belonging to the sole ownership of Raghunath. The defendants were having their 1/7th undivided share. Therefore, Raghunath was

not having any sole right to alienate the suit property. So called agreement executed by the Raghunath is not binding on the shares of these defendants. The defendants have already filed counter claim to seek relief against the plaintiffs conduct. The plaintiff is cultivating sugarcane in the suit property by violating rights of the defendants. Therefore, the defendants are under the apprehension of third party interest in the suit property at the hands of plaintiff. Therefore, to restrain the plaintiff, the current application is filed.

Brief facts of plaintiff case is as under:-

05. The application is objected by the plaintiff vide her say at Exh. no. 19. She has submitted that, the suit property is purchased by her from Raghunath by registered agreement to sell. The said agreement to sell ratified by defendant no. 1/B. She has submitted that property in Gat no. 1019/C which was belonging to brother of Raghunath i.e. Shankar Ganu Patade was purchased by the plaintiffs husband through registered agreement of sell no. 55/1997. In view of that agreement to sell, husband of the plaintiff is in the possession of that property no. 1019/C. The defendants predecessor was in need of money for his construction. Therefore, he has approached towards this plaintiff. Resultantly, agreement to sell was executed in respect of the current suit property.

06. The plaintiff has submitted that, for execution of the sale-deed, notice was issued through their advocate. However, defendants have unclaimed that notice. The defendants since last 25 years have not raised prayer of partition. The defendants have not specifically mentioned exactly which bill of sugarcane taken in which year has to be deposited before the Court. The defendants have not submitted name of the institution of which the plaintiff is trying to create encumbrance. The defendants have not submitted any prima-

facie documents in that aspect before the Court. Therefore, the current application being vague & ambiguous, the defendants have submitted to reject the same.

07. Heard Advocate Shri. A.J. Desai for the plaintiff & Advocate Shri. V.C. Powar for the defendants.

08. 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 with reasoning is as under:-

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

REASONS

As to points No. 1 to 3:-

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

10. Through the current application, the defendants wish to direct the plaintiff to deposit bill of sugarcane before the Court and to restrain the plaintiff from creating any third party interest over the suit property. It is not in dispute that, registered agreement to sell was executed by defendants predecessor in favour of the plaintiff in the year 1997. Name of the plaintiff is entered to the other right

column of the 7/12 extract of the suit property. The defendants have not challenged it since execution. Thus, it appears that, after institution of this suit, the defendants are claiming their rights by filing the counter claim.

11. Apart from that, perusal of the prayers and pleading in the current application, nowhere it is mentioned by the defendants that over which area, the plaintiff has cultivated crop of sugarcane and the income of which year is directed to be deposited before the Court by the plaintiff. The defendants are under the apprehension of alienation at the hands of plaintiff, but nowhere the defendants have put-forth any documents to suggest that, the plaintiff is in hurry to alienate the suit property or hurry in creating encumbrance over the suit property. Thus, it appears that, the defendants have made vague & ambiguous pleading pertaining to their prayers sought in the current application. Resultantly, the defendants are not having any prima-facie case, balance of convenience does not lies in their favour & thus, remedy of injunction if refused, they will not suffer to loss. Hence, I answered points No. 1 to 3 in the negatives. In answer to point No. 4, following order is passed:-

ORDER

1. The application (Exh. 15) is rejected.
2. In the peculiar facts & circumstances, there is no order as to costs.

Kagal.
Date: 27/02/2024.

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