

	<p>Regular Civil Suit No.6/2022.</p> <p>Maruti Sakharam Bugale Deceased Vs. Bandu Sakharam Bugale Deceased</p>
-----------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------

ORDER BELOW EXH. 5.

The present application is filed by the plaintiff for grant of interim injunction under provisions of Order 39 Rule 1 & 2 of Code of Civil Procedure (herein after referred as CPC).

2. The plaintiffs filed this suit for partition and injunction. Suit property is an agricultural land and house property situated at village Kodoli, Tal.Panhala more specifically mention in paragraph No. 1 of the plaint. Suit property is originally owned by Chandrabai Dattu Sathe. The predecessor of plaintiff and defendant No. 1 to 6 - Sakharam alias Sakhoba Bugale was tenant in the said property. The suit property is possessed by Sakhoba Bugle as a tenant. Chandrabai Sathe initially filed tenancy application No.11/88/1957 for recovery of possession from Sakhoba Bugle which was rejected by the Mamledar Court Panhala on 08.04.1958. Defendant No.7 after death of Chandrabai pretended himself as legal heir of Chandrabai. Suit property is not ancestral property of defendant No.7. Defendant No. 7 has no any concern with the suit property.

3. The names of Bandu, Bapuso and Maruti i.e sons of Sakhoba are recorded as possessors of the suit property from year 1957-58. In the tenancy proceedings under Section 32-G of Tenancy Act

concern authority by its order dated 30.09.1987 held that the heirs of Sakhoba Bugle are not tenant in to suit property. Against the said order Bandu Bugle and Bapu Bugle filed appeals. The said appeals were allowed by order dated 31.08.1995. Being aggrieved by the said order the defendant No.7 filed tenancy revision application No.1196 before Maharashtra Rent Tribunal which was dismissed by the Hon'ble Tribunal by order dated 29.04.2000. Against the said order defendant No. 7 filed writ petition before Hon'ble High Court and Hon'ble High Court by its order dated 22.0.2002 remanded the matter back for re-inquiry under Section 32-G of Tenancy Act. Accordingly concern authority re-inquired the matter. The Tahsildar Panhala by his order dated 16.06.2016 directed that suit property be given to plaintiff and defendant No. 1 to 6 by 1/3rd share each. Accordingly, plaintiff No.1 to 6 paid the consideration amount and become purchaser of the suit land. Defendant No. 1 to 6 filed appeal against the said order dated 16.06.2016.

4. Plaintiff and defendant No. 1 to 6 are joint owners of the suit property. The suit property is yet not partitioned between plaintiffs and defendant No.1 to 6. Plaintiffs made the suit land cultivable. Plaintiffs cultivating crops of soyabean, rice, ground-nut, Jawar, chilly pepper etc. in the suit property. Plaintiffs possessing their share in the suit property. Defendant No.1 to 6 denying the plaintiff's right of ownership and possession. Therefore, plaintiffs filed the suit for partition and injunction. Plaintiffs under apprehension that pending suit defendant will dispossess them which will cause great prejudice to the plaintiffs. Therefore, filed this application for grant of interim injunction.

5. Defendant No. 1 to 6 filed their say to this application at Exh. 28 and resisted the application. Defendant No.7 not appeared in the suit hence ex-party order passed against him. At the out set these defendants denied all the submissions of the plaintiff. Plaintiffs have not properly described the suit property. Plaintiffs have not made party to all the heirs of Sakhoba Bugle. The plaintiffs wrongly mention family tree in the plaint. It is sum and substance of these defendants say that the suit property originally belongs to Chandrabai Sathe. Bandu Sakhoba Bugle and Bapu Sakhoba Bugle are originally cultivating the suit land as a tenant. Maruti Bugle is never in the possession of the suit property. Maruti Bugle is no tenant in the suit property. Bandu Bugle and Bapu Bugle cultivating the suit property as a tenant of Chandrabai and they paying rent to Chandrabai. The original owner Chandrabai filed tenancy proceedings for recovery of possession but her application was rejected and the suit property confirmed to be in possession of Bandu Bugle and Bapu Bugle as a tenant. Chandrabai was died in the year 1967 thereafter Shamsundar Nimbalkar pretended himself as legal heir of Chandrabai. Therefore, he has filed R.C.S.No.24/1973 against Bandu Bugle and Bapu Bugle. The suit for injunction was also filed by Bandu Bugle and Bapu Bugle against Shamsundar Nimbalkar. In the said proceedings it is confirmed that Bandu Bugle and Bapu Bugle are the tenants of suit property.

6. That Bandu Bugle and Bapu Bugle are the owners and possessors of the suit property. Tahsildar Panhala by its order dated 19.03.2009 fix the consideration amount under section 32-G and 63-A of Bombay Tenancy Act. The original owner and legal heirs of Maruti

Bugle having no concern with the suit property but filed tenancy appeal Nos.7/2009 and 8/2009. The various appeals proceedings tenancy inquiry it is confirm that Bandu Bugle and Bapu Bugle are only the possessors of the suit land being tenants. The plaintiff have no any concern with the suit property filed this false suit against defendant Nos. 1 to 6. Therefore defendant Nos. 1 to 6 prayed to reject this application.

7. Heard learned advocate Shri. D. B. Shirke for plaintiffs and Shri. B. S. Ambekar for defendant No. 1 to 6. Both the advocates vehemently argued in consonance with their respective pleadings. The advocate for plaintiffs in support of his submission relied on Judgment of **Hon'ble Appex Court** in case of **Jagdishchandra V/s. Mohanbhai reported in 2002(9) SCC 540** Wherein it is held by Hon'ble High court that," Even sale having been declared ineffective rights of the tenant were not extinguished. Tenancy right being hereditary, all sons of deceased tenant become entitled to cultivate land. He further relied on Judgment of **Hon'ble Bombay High Court** in case of **Vasudev Kale V/s. Vijay Rout** reported in **2001 (3) Mh.L.J.90**, Wherein it is held by Hon'ble High court that," Section 40 of the Act merely recognizes the right of heirs of tenant to inherit tenancy" . He further relied on Judgment of **Hon'ble Gujrat High Court** in case of **Balwant Bhai V/s. Hatilal** reported in 1993(2) **GCD 563**, Wherein it is held by Hon'ble High court that," *The statutory tenancy of the deceased tenant enures for the benefit of his willing heirs* ".

8. He further relied on Judgment of **Hon'ble High Court of Panjab and Hariyana** in case of **Charnsing V/s. Kevalsing** reported in **2015(0) supreme (P & H) 1534** Wherein it is held by Hon'ble High court that, "*When situation of a detriment to the interest of other co-owner relief of an injunction can be granted*". He further relied on Judgment of **Hon'ble Appex Court** in case of **Adivappa V/s. Bhimappa** reported in **2017 supreme (SC)907**, Wherein it is held by Hon'ble High court that, "*in absence of any proof to the contrary every Hindu Family is presume to be joint in food ,worship and estate*". He further relied on Judgment of **Hon'ble Appex Court** in case of **Tanushree V/s. Ishani** reported in **2008 supreme (SC) 427** Wherein it is held by Hon'ble High court that, "*A co-owner being in exclusive possession of joint property would be entitled to injunction*".

9. He further relied on Judgment of **Hon'ble Punjab and Haryana High Court** in case of **Hanuman V/s. Chattarsing** reported in **2018 supreme (P & H) 2472**, Wherein it is held by Hon'ble High court that, "*co-sharer in exclusive possession of share would be entitled for injunction to protect his possession*". He further relied on Judgment of **Hon'ble Madya Pradesh High Court** in case of **Bhanwarlal V/s. Dayaram** reported in **1982 supreme (MP) 77**, Wherein it is held by Hon'ble High court that, "*Possession is nine points out of ten for grant of injunction*". He further relied on Judgment of **Hon'ble Andra Pradesh High Court** in case of **V. S. Reddy V/s. K. L. Reddy** reported in **2002 supreme (AP)1333**, Wherein it is held by Hon'ble High court that, "*He shall not be heard who says things contrary to each other. The principle is based on maxim' Allegans contraria non estaudiendus'* He

further relied on Judgment of **Hon'ble Madhya Pradesh High Court** in case of *B. A. Lail V/s. Sardar Lalvani* reported in 1962 supreme (MP)121. The Hon'ble High Court observed the same findings about estoppel as of case laws discussed above.

10. Advocate for defendant No. 1 to 6 in support of his submission relied on Judgment of **Hon'ble Bombay High Court** in case of **S. R. Patil V/s. S. L. Kore** reported in 2004(4) MHLJ 119 Wherein it is held by Hon'ble High court that, "*when proceeding under section 32-G were finally decided by Tahsildar and certificate under section 32-M also issued in favour of tenancy, the Tahsildar become functus officio . It is not open to him to once against initiate fresh proceedings under Section 32-G of the Act*". He further relied on Judgment of **Hon'ble Bombay High Court** in case of **M/s. Amoda Properties V/s. Joy Basu** reported in 2022(3) ALI MR 140, Wherein it is held by Hon'ble High court that, "*Untill property is partitioned co-owner cannot seek injunction against other co-owner*". Carefully perused the above said case laws.

11. Perused the material on record. Following points are raised for my determination and I have recorded my findings against each of them as follows-

<u>Sr.No.</u>	<u>Points</u>	<u>findings</u>
1	Whether there is a prima facie case in favour of plaintiffs ?	No.
2	Whether balance of convenience is in favour of plaintiffs ?	No.
3	Whether irreparable loss would be caused to	No.

	the plaintiffs if application for temporary injunction is rejected?	No.
--	---------------------------------------------------------------------	-----

REASONS

12. The plaintiffs in support of their claim have relied on bulk of documents for sake of brevity their nomenclature is not reproduced. The plaintiffs have mainly relied on revenue records and copies of various tenancy proceedings in support of their claim. The defendants also relied on revenue records and copies of various tenancy proceedings in support of their defenses.

AS TO POINT NO. 1 :-

13. Perused application say and record of the case. The suit of plaintiff is for Partition and perpetual injunction. It is the case of plaintiff that suit property is tenanted property of plaintiff and defendants ancestor Sakhoba Bugle. Therefore, plaintiffs and defendants are co-owner and joint possessors of the suit property. Defendants denied the fact and submitted that after demise of Sakhoba Bugale his only two sons Bandu and Bapuso are cultivating the land and they are in possession of the suit property. The third son Maruti and his heirs have no any concern with the suit property. In view of these rival contentions plaintiffs have to prima facie establish their possession over the suit property and obstruction at the hands of defendants. It is not disputed fact that the suit property is tenanted land of predecessor of plaintiffs and defendants i.e. Sakhoba Bugle. It is also not disputed fact that Bapu, Bandu and Maruti are the sons of Sakhoba. It is also not disputed that the deceased Sakhoba was possessing land as tenant.

14. The crux of the matter is that who is in possession of suit property after Sakhoba. Plaintiffs are heirs of Bapuso and Maruti. Defendants No. 1 to 6 are heirs of Bandu. Plaintiffs to establish their possession produced on record copies of various tenancy proceedings as well as of civil proceeding. After perusal of these documents it is seen that the defendant No. 7 filled various civil and tenancy proceedings as an owner for recovery of possession. The plaintiffs and defendants No. 1 to 6 also filed various proceedings to declare them as tenants. These matters are went up to Hon'ble High Court and Hon'ble Tribunal. The issue as to tenancy and consequently of possession is pending before higher courts. Therefore, it is difficult to ascertain possession at this primary stage. From the copies of various judicial & revenue proceedings; and revenue record the possession of parties can not be ascertained.

15. Further the plaintiffs claim to be heirs of deceased Maruti and Bapuso and praying for partition. The plaintiffs claim to be co-sharers in the suit property. As above discussed the possession at this stage can not be ascertained. Therefore plaintiffs possession can not be considered as exclusive possession. Further at this prima facie stage it is also not established by plaintiffs that defendants damaging and or alienating the property. Thus, in light of above cited case laws of Hon'ble High Court and Apex Court injunction can not be granted against the co-sharer. Considering these facts and circumstances plaintiffs failed to prima facie establish plausible case in their favour. Therefore, plaintiffs have no prima facie case. Hence point No.1 is answered in negative.

AS TO POINT NO. 2 AND 3.

16. As the plaintiffs failed to prove prima face case and obstruction at the hands of defendants; grant of temporary injunction in plaintiff's favour will cause great hardship and irreparable loss to the defendants as the question of tenancy and possession is yet not concluded and pending before higher courts if interim injunction granted it will in fact cause irreparable loss defendants and it would also lead to multiplicity of proceeding. Considering these facts and circumstances point No. 2 and 3 are answered in negative. In result, following order is passed.

ORDER

- a) Application is rejected.
- b) Costs in cause.

(Dictated and pronounced in open Court).

Date: 18.03.2023.

Atul A. Kore,
Jt. Civil Judge J.D. Panhala.