

MHKO170003912016



Before the Court of Jt.Civil Judge Junior Division, Panhala.

Presided over by

(Prerana R.Nikam)

Regular Civil Suit No.76 of 2016.

Maruti Daulat Karamble & etc.

V/s.

Shakuntla Bhimrao Karamble & etc.

Order Below Exh. No.5.

(Passed On 19th day of June, 2020)

NATURE OF APPLICATION: -

1] The present application is filed by the plaintiffs for temporary injunction under order 39 rule 1 and 2 of code of civil procedure.

THE FACTS: -

2] The present suit is instituted for partition in respect of the properties mentioned in para first of the plaint. The suit properties are ancestral properties and joint family properties purchased from the income of joint family. The suit properties are yet not partitioned. Gat no. 346 is purchased from the income of joint family property by the predecessor of the defendants. Gat no.342 was purchased on the name of Dhondiram, for plaintiffs and defendants. Gat no.437 also purchased by predecessor of the plaintiffs and defendants, in common. In February 2016, the plaintiffs demanded their share in the suit properties but the defendants denied the same. Hence, the plaintiffs instituted the present suit. The plaintiffs are apprehended that, till the final decision of the suit the defendants

will alienate the suit properties. Therefore, the plaintiffs filed the present application for temporary injunction restraining defendants from alienating the suit properties to third persons, till the final decision of the present suit.

SAY/REPLY: -

3] The suit summons is served to the defendants; accordingly, they appeared and filed the written statement and say to the present application vide Exh.26. It is contended by the defendants that; the contents of the suit and present application are false. The description of the suit properties is not correct as the plaintiffs not mentioned its four boundaries. The daughters are not added in the present suit. Gat no.346 and 342 are self-acquired property of deceased Dhondiram Aakaram Karambale. Also, Gat no.437, was purchased by deceased Dhondiram Aakaram Karambale in auction, out of his own income. The properties except Gat no.447 and 438 are already partitioned in the year 1960 and the plaintiffs and defendants are cultivating their share as per the partition. Hence, prayed to reject the application.

POINTS -

4] After going through the case of the plaintiffs and defendants, following points arise for my consideration along with findings based on reasons,

Sr. no.	Points	Findings
1.	Whether prima facie case lies in favour of the plaintiff?	<i>...in Affirmative</i>
2.	Whether balance of convenience lies In favour of plaintiff?	<i>...in Negative</i>
3.	Whether irreparable loss will be caused to the plaintiff, if temporary injunction is not granted?	<i>...in Negative</i>
4.	What order?	<i>... As per final Order</i>

REASONS

5] The record has carefully and thoroughly perused. The submissions of the learned counsel of the applicant and non-applicant heard and have been considered.

As to point no 1 to 3;

6] As all points are intermingled with each other and to avoid the repetition of pleading and the facts, all these points are taken for consideration in common.

7] While considering an application for the injunction, it is well settled, the courts would pass an order thereupon having regard to: **(i)** Prima Facie, **(ii)** Balance of Convenience and **(iii)** irreparable injury. Likewise, in *Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd. AIR 1999 SC 3105*, the Hon'ble Supreme Court observed that the other considerations which ought to weigh with the Court hearing the application or petition for grant of injunctions are **(i)** Extent of damages being an adequate remedy; **(ii)** Protect the plaintiff's interest for violation of his rights though however having regard to injury that may be suffered by the defendants by reason thereof; **(iii)** the Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others; **(iv)** no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case - the relief being kept flexible; **(v)** the issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case; **(vi)** balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant ; **(vii)** whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.

8] With the above guidelines, I am taking into consideration the application for consideration with the aid of 3 pillars of golden rule of temporary injunction. I have given thoughtful consideration to the arguments advanced by the learned advocate of the plaintiffs and defendants. No doubt, the injunction being an equitable remedy is granted by the court in exercise of its judicial

discretion and has to be considered from various facts which arise in particular set of circumstances in each case.

9] I have gone through the averments made in the application and the documents filed along with the plaint. The present suit is instituted for partition. Prima facie case is not to be confused with prime facie title which has to be established on evidence at the time of trial. Only prima facie case is a substantial question raised bonafide which needs investigation and a decision on merits. Satisfaction that there is a prima facie case, is not sufficient to grant injunction.

10] The plaintiffs have filed the 7/12 extract of the suit properties. On perusal of the 7/12 extract it appears that, the 7/12 extract of Gat no.342/A vide Exh.6, Gat no.346 vide Exh.7 and Gat no.437 vide Exh.8 bears only the name of the defendants. 7/12 extract of Gat no.438, 360, 349, 394, 404, 405, 406, 407, 447, 453, 516 and 518 vide Exh.9 to 20, bears the name of plaintiffs and defendants as co-sharer with their respective shares. Except, the 7/12 extract the plaintiffs have failed to produce on record the evidence about the alienation of the suit properties by the defendants, as there are other co-sharers.

11] The learned advocate appearing on behalf plaintiffs would support his contentions by placing reliance on the authority; ***Shivgonda Balgonda Patil and others v/s The Director of Resettlement and others, reported in AIR 1992 Bombay 72***, in this case Hon'ble Bombay High Court held that, 'Mutation entry recording names of heirs of deceased Khatedar and setting out shares in which various lands were being cultivated by sons only that entry cannot be said to record any partition effected between sons. At the highest it records family arrangement'.

Here in the case in hand, some of the 7/12 extract of the suit properties bears only the name of defendants and some bears the name of plaintiffs and defendants. The plaintiffs have not filed any mutation entry on record. The facts of the present case and case cited supra are different. Therefore, the findings of the above-mentioned authority are not applicable to the case in

hand as the facts of case cited supra are as regard to the Land Acquisition Act and Maharashtra Resettlement of Project Displaced Persons Act, 1976.

12] As per the version of plaintiffs, the suit properties are yet not partitioned. The 7/12 extracts of the some of the suit properties bear the name of plaintiffs and defendants. As a general rule, a co-owner has an interest in the whole property and also in every parcel of it. Possession of the joint property by one co-owner is in the eye of law, possession of all even if all but one is actually out of possession. A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

13] Here it is pertinent to note that, the present suit is instituted on 16/05/2016 and the hearing on the present application is concluded on 15/02/2020. As till 15/02/2020, there is nothing on record which shows that, the defendants are trying to alienate the suit properties. The injunction against co-owners are granted only in the rare and exceptional circumstances. In the present case the plaintiffs have failed to show the rare and exceptional circumstances. Mere on the ground of apprehension, it is not proper to grant temporary injunction.

14] Court has to strike the balance between the parties at the time of disposal of injunction applications. The balance between the parties is to be maintained. But, here in the present case there is no evidence on record that the defendants are trying to alienate the suit properties. On the other hand, some of the suit properties are bears only the name of the defendants. Therefore, prima facie we cannot say that, the defendants are trying to create third party interest in the suit properties. Though, from the documents on record it appears that prima facie case lies in favour of the plaintiffs, but irreparable loss may be caused to the other side. Hence, I held that, the plaintiffs are not entitled for the order of temporary injunction as they failed to prove the 3 golden rings. According I answer point no. 1 in Affirmative and point no. 2 to 3 in Negative.

As to point no. 4:

15] Therefore, considering all these aspects together, I come to the conclusion that the plaintiffs proved prima facie case in their favour and not the irreparable loss and balance of convenience. As compared to the plaintiffs, if injunction is granted, the defendants shall suffer irreparable injuries as well as inconvenience. Therefore, evaluating all pros and cons, I come to the conclusion that, plaintiffs have failed to prove all golden principles of injunction as such I answer, point no. 2 to 3 in negative. The findings of the instant application shall not affect the final decision of suit. But, at this stage the balance should be maintained. In the result, I proceed to pass following order;

ORDER

- 1] The application is rejected.
- 2] Parties shall expedite the matter.

Panhala.

Dt.19.06.2020

(Prerana R. Nikam)

Jt. Civil Judge Junior Division,
Panhala, District Kolhapur.