

**Regular Civil Suit No.169/2022.****Lila Rajaram Shinge****Vs.****Vijay Mahadev Bankar oth 2****ORDER BELOW EXH. 5.**

This is an application filed by the plaintiffs for grant of temporary injunction under provisions of Order 39 Rule 1 and 2 of Code of Civil Procedure 1908 (herein after referred as CPC). Praying for restraining the defendant No. 1 for recording his name to the west Maharashtra Devsthan Committee i.e. defendant No. 2 and 3 for the weekly and yearly workshop of Kekarling Dev(God)(केदारलिंग देव वाडीरत्नागिरी यांचेकडील आठवडे व वर्षिलेप्रमाणे पाळीपत्रक) on the basis of order of heirship certificate in the Civil Misc. Application No.19/2018.

FACTS OF PLAINTIFFS CASE IN SHORT-

2. According to the plaintiff, she is the only direct legal heir of Mahadev Keshav Bankar. After the death of Mahadev Bankar, the plaintiff is performing her father's right to workshop the Kedarling Dev through her husband and children. She further submitted that defendant No.1 has no relation with Mahadev Bankar. He is not the heir of Mahadev Bankar. Defendant No. 1 filed Civil Misc. Application No.19/2018 as per Bombay Regulation Act for himself, his mother and for the plaintiff. As per the order passed in Civil Misc. Application No.19/2018 plaintiff and defendant No. 1 is heirs of the deceased Madukar Bankar and they are getting heirship certificate. On the basis of said heirship certificate defendant No. 1 is likely to record his name in the weekly, yearly duty sheet to the president and secretary of Western Maharashtra Devsthan Committee i.e. defendant NO. 2 and 3.

According to the traditional practice of Wadi Ratnagiri illegitimate child is not entitled to worship the Kedarling dev. If defendant No.1 is succeeded in recording his name in the weekly and yearly duty sheet to the defendant No.2 and 3 for worship of Kedarling dev, an irreparable loss would cause to the plaintiff and therefore, temporary injunction is sought against defendant No. 1.

FACTS OF THE DEFENDANT NO. 1'S CASE.

3. Defendant No.1 has filed his say and written statement at Exh. 22 and denied all the adverse contentions in the plaint. Accordingly, to the defendant No. 1 in Civil Misc. Application No. 19/2018, the competent court held that defendant No.1 was the son born out of wedlock of deceased Mahadev Keshav Bankar and Malan Mahadev Bankar. Competent Court also declared that defendant No. 1 is the legal heirs of deceased Mahadev Keshav Bankar. He further contended that, after the decision of competent court, without filing an appeal or any legal case against said decision, the plaintiff has filed this suit for restraining the defendant No. 1. According to the defendant No. 1 suit is barred by principal of "Res-Judicata and Principal of Estoppel". It is further contended that if the injunction is granted an irreparable loss would cause to defendant No. 1 as he will have to lose his legal right and therefore, prayed for rejection of application.

EX-PARTE AGAINST DEFENDANT NO. 2 AND 3

4. Despite serving of suit summons to defendant No. 2 and 3 i.e. president and secretary of West Maharashtra Devsthan Committee neither they nor their advocate appeared. Hence I have passed ex-parte order against defendant No. 2 and 3 below Exh.1.

POINTS FOR DETERMINATION.

5. Perused record along with various documents filed on record by both the parties. Heard Shri. A.P. Mahajan, learned advocate for plaintiff and Shri. S.S. Khot learned advocate for defendant No. 1.

6. Considering the rival pleadings of both the parties following points arise for my determination to which I have recorded my findings against them with reason stated below.

Sr.No.	Points for determination	findings
1	Does the plaintiff proves that she has a prima facie case ?	In the negative
2	Whether balance of convenience lies in favour of plaintiffs ?	In the negative
3	Whether plaintiff will suffer irreparable loss if temporary injunction is refused ?	In the negative
4.	What order	Application is rejected

ARGUMENTS

7. Learned advocate for plaintiff submitted that as per the order in Civil Misc. Application No.19/2018 plaintiff and defendant No. 1 is the legal heirs of deceased Mahadev Bankar. But defendant No. 1 is the illegitimate son of Mahadev Bankar and therefore name of defendant No.1 cannot be recorded in the weekly and yearly duty sheet of West Maharashtra Devsthan Committee. So he has no right to perform worship of “Kedarling dev”. He further argued that, application under order 7 Rule 11 of Code of Civil Procedure is rejected by my Id. Predecessor. Moreover, in writ petition No. 6576/2024 Hon’ble Bombay High court held that plaintiff is not required to claim declaration. It is further submitted that prima facia case lies in favour of plaintiff as she

is legal heir of deceased Mahadev Bankar and she perform right of worship through her husband and son. Balance of convenience is also lies in her favour and if the defendant No.1 is not restrained from recording his name in duty list of Kedarling dev then she would suffer irreparable loss.

8. Per contra, learned advocate for defendant No. 1 submitted that plaintiff and defendant No. 1 is the legal heir of deceased Mahadev Keshav bankar and they got heirship certificate asper the order passed in Civil Misc. Application No.19/2018. Plaintiff wants to restrain the execution of order passed in Civil Misc. Application No.19/2018. He further submitted that plaintiff is not claiming the declaration so the suit for injunction is not maintainable. In support of his submission he has relied upon **TVR Reddy V/s. M.Mallappa**- reported in **AIR 2021 SC 4293** wherein it is held by the Hon'ble Apex Court that “ *when there there is cloud over title, mere suit for injunction is not maintainable*”. He further relied upon **Hon'ble Bombay High Court** in Case of **Parvatibai More V/s. Surekha Surjuse** reported in **2019(3)ABR 164**, wherein it is held by Hon'ble Bombay High Court that “ *Heirship certificate already granted in favour of other party pertaining to same deceased person then remedy available to party is to initiate proceedings under section 383 of Act or for annulment of certificate or to file suit under section 387 of the Act*”. In this case heirship certificate was issued declaring heirs of deceased and the aggrieved person thereafter filed second similar application/proceedings and prayed for heirship certificate declaring heirs of same deceased person, which ultimately turned down by the Hon'ble High Court. In present proceedings suit is for injunction and it may amount to restrain execution of heirship certificate. In present suit heirship certificate is not challenged directly or new heirship certificate is claimed. Therefore, the facts of present proceedings and case cited supra

are different and not helpful to the defendant No.1.

9. He further relied upon **Abdul Wahid V/s. Manish Hansraj** reported in **2012 (5) AIR BOM. R.191** wherein Hon'ble Bombay High Court held that, "*when remedy of suit for specific performance is available to the plaintiff, he cannot file suit for injunction simplicitor nor he can claim Temporary injunction in pending suit for injunction simplicitor*". Case in hand their no agreement or contract between the parties. Therefore, with due respect fact and circumstance of the case cited supra are different and not helpful to defendant No.1. He lastly submitted that neither prima facie case nor balance of convenience lies in favour of plaintiff. If injunction is granted greater hardship would cause to the defendant No.1. Hence prayed to reject application with cost.

DOCUMENTS ON RECORD.

10. The plaintiff has produced following documents on record vide list at Exh. 3 and 7
- 1) Certified Copy of Weekly duty list register of Kedarling Dev, Wadi Ratnagiri dated 29.09.2014 at Exh.3
 - 2) Certified Copy of Weekly duty list register of Kedarling Dev, Wadi Ratnagiri dated 14.12.2020 at Exh.7
 - 3) Judgment copy in Civil Misc. Application No.19/2018 at Exh.28

REASONS.

Granting of Temporary Injunction is discretionary relief

11. Order 39 Rule 1 of C.P.C. laid down the circumstance under which a temporary injunction can be granted in a suit. Unless the circumstance laid down in this rule exists, a court has no jurisdiction to grant temporary injunction. Granting an order of injunction under Order 39 Rule 1 of C.P.C. is purely discretion of the court and law is well settled that this discretion vested in the court, like any of the discretionary power can be exercised in accordance with the reason and

on sound judicial principles. The second principle of law governing exercise of the discretion conferred by this rule are to the effect that a person who seeks a temporary injunction must satisfy the court as to the existence of the following conditions , -

Firstly- that there is prima facie case raised in the suit which is required to be tried and that on the facts before the court there is probability of the petitioners being entitled to the relief asked for by him.

Secondly- that the courts interference is necessary to protect the petitioner from that species of injury which the court calls irreparable, before the legal right of the petitioner can be established on trial, and

Thirdly- that the comparative mischief or inconveniences which is likely to occur by withholding the injunction will be greater than that which is likely to arise from granting it.

As to point No. 1 to 4 :-

12. All the points are interlinked with each other hence to avoid repetition. I took them for discussion together.

13. Prima facie case means existence of circumstance justifying the trial of the question of fact and law raised in the litigation. Merely, because plaintiff has filed a suit for injunction, does mean that there is a prima facie case in favour of the plaintiff. It is also well settled that in order to make out prima facie case, plaintiff need not established his title. The plaintiff is required to prima facie establish that in the event of non interference by the court there will be irreparable injury and substantial loss would cause to him. Existence of prima facie case alone does not entitle the plaintiff to an order of temporary injunction. Along with prima facie case, to grant the relief temporary injunction in favour of plaintiff there must also exists balance of convenience in his favour

and injury of irreparable loss.

APPRECIATION.

14. As per the plaint and copy of weekly duty list register of Kedarling Dev, Wadi Ratnagiri dated 29.09.2014 and 14.12.2020 at Exh. 3 and 7 Mahadev Keshav Bankar had right to perform worship of 'Kedarling dev' and his name is recorded to the West Maharashtra Devstan committee i.e. defendant No.2 to 3 for weekly and yearly worship of 'Kedarling dev'. According to the plaintiff after the death of her father she is only legal heir and she perform worship of 'Kedarling dev' being legal heir through her husband and son. Defendant No.1 is not the legal heir of deceased Mahadev Bankar and illegitimate son has no right to perform worship of 'Kedarling dev'. At this primarily stage it cannot be determined that the defendant No. 1 is an illegitimate son of or not. Moreover, neither plaintiff contents in the plaint nor argued that right to worship of Kedarling Dev are inherited. Even plaintiff has not filed any document which shows that right to worship of Kedarling Dev is inherited.

15. However, it is important to note that, as per the pleading of plaintiff she is legal heir of deceased Mahadev bankar and perform the right of worship of 'Kedarling dev' through her husband and son. As per the same principle, defendant No.1 is also right to perform worship of Kedarling Dev as he is also the legal heir of the deceased Mahadev bankar as per the order in Civil Misc. Application No.19/2018. Therefore, the question of restraining defendant No. 1 from recording his name to the defendant No. 2 and 3 Devshthan committee for performing right of worship of 'Kedarling dev' would not arise without challenging the heirship certificate issued to the defendant No. 1. Therefore, there is no prima facie case in favour of plaintiff. As

the heirship certificate is issued to the defendant No. 1 also so, the 'Balance of convenience does not lie in favour of plaintiff. So far as irreparable loss is concerned since plaintiff failed to prove prima facie case in her favour, even not single word contended and submitted by the plaintiff that how much and what kind of damages will be suffered by the plaintiff, no irreparable loss would cause to her if injunction is refused on the other hand.

16. In view of the aforesaid finding, I hold there is no merit in the application. Accordingly, I answer point No. 1 to 3 in the negative and resultantly for point No. 4 I pass the following order.

ORDER

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

Place :- Panhala.
Date :- 02.09.2024.

Smt. V. R. Mane
Jt. Civil Judge Jr. Dn., Panhala.