



ORDER BELOW EXH. 5

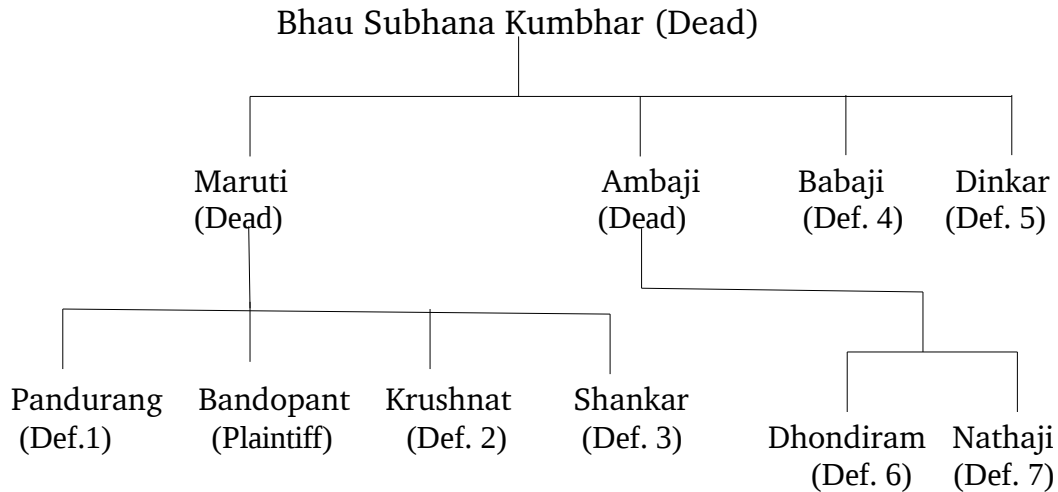
This is an application by plaintiffs under Order 39 Rule 1 and 2 R/w Sec. 151 of C.P.C. praying for interim relief of injunction restraining defendants 1 to 3 from outsetting plaintiff from suit property, from causing any development, change and permanent construction in suit property. Plaintiff is also praying for interim relief of injunction restraining defendants from creating third party interest in the suit property.

2. The properties described hereunder are described as suit property in the application :-

Sr.No.	Gat No.	Area H.Are	Out of portion
1	49	0.58	1/4
2	501	0.62	1/4
3	548	0.19	1/2
4	579	0.62	1/4
5	583	0.66	1/4
6	587	0.65	1/4
7	591	1.94	0.97
8	551	0.04	1/4
9	584	0.20	0.02
10	567	0.05	0.01.2

3. As per plaintiff the suit properties are ancestral properties of

plaintiff and defendants 1 to 8. The pedigree showing relations between plaintiff and defendants is as under :-



4. Late Maruti, Aabaji, Babaji and Dinkar were real brothers. However, they have partitioned their ancestral and H.U.F. properties among themselves. Though the heirs of Late Aabaji, Babaji and Dinkar are made formal parties to the suit as their names are still appearing to some properties. The real claim of plaintiff is against defendants 1 to 3.

5. As per plaintiff he and defendants 1 to 3 are real brothers and heirs of Late Maruti. His father Maruti and mother Parubai have expired on 22/01/2005 and 24/01/2010 respectively. Further, plaintiffs and defendants 1 to 3 are also having sisters namely Taibai Tukaram Kumbhar, Hausabai Madhukar Kumbhar, and Shantabai Tanaji Kumbhar. However, these sisters have relinquished their rights in the suit properties vide registered deed No. 1596/2006 dated 10/11/2006. Thus, these sisters are not made parties to the suit.

6. As per plaintiff the suit properties are still joint and undivided between plaintiff and defendants 1 to 3 as they are not partitioned and separated by meets and bounds. Though, for the sake of convenience plaintiff and defendants 1 to 3 have made a family arrangement and pursuant to the same cultivating some portions of suit properties independently. However, the lowest grade land has come to the hands of plaintiff. Further he is not allotted with equal share that of with defendants. Thus, when plaintiff asked for partition and separate possession of his share, on 20/01/2016 defendants 1 to 3 declined to do so. Defendants have also threatened that they will not allow plaintiff to harvest the sugar cane crop in suit properties. Hence, this application.

7. Vide his say and written statement at Exh. 31 defendant 1 has strongly combated the application. As per defendant 1 the entire suit filed by plaintiff is based on false and frivolous premise. The suit properties are already partitioned among plaintiff and defendants long back in year 1976 and since then they are cultivating the same independently. By spending huge amount and with his efforts defendant 1 has developed and irrigated the land came to his share. Now with a view to grab said land, plaintiff has filed this suit. Further, suit properties are not properly described. Moreover, the persons constituting necessary parties to the suit are not made party so. Mere with intention to harass defendants this suit is filed. Ultimately, defendants has praying for rejection of the application.

8. As far as defendant 2 to 8 is concerned vide their say and written statements at Exh. 26 and 27 they have admitted plaintiffs

claim. Defendants 9 and 10 have not filed their say and written statement in the case.

9. In support of his case plaintiff has placed reliance upon following documents :-

Sr. No.	Particulars
1	Certified copy of 7/12 extract of Gat No. 495 at Exh. 6
2	Certified copy of 7/12 extract of Gat No. 501 at Exh. 7
3	Certified copy of 7/12 extract of Gat No. 548 at Exh. 8
4	Certified copy of 7/12 extract of Gat No. 579 at Exh. 9
5	Certified copy of 7/12 extract of Gat No. 583 at Exh. 10
6	Certified copy of 7/12 extract of Gat No. 587 at Exh. 11
7	Certified copy of 7/12 extract of Gat No. 591 at Exh. 12
8	Certified copy of 7/12 extract of Gat No. 551 at Exh. 13
9	Certified copy of 7/12 extract of Gat No. 584 at Exh. 14
10	Certified copy of 7/12 extract of Gat No. 567 at Exh. 15
11	Certified copy of 7/12 extract of Gat No. 384 at Exh. 16

10. Defendant 1 has placed reliance upon the documents produced on record by plaintiff.

11. Heard both sides. Perused record. The points crop up for determination and reasoned findings thereon are recorded as under :-

Sr.No.	Point for determination	finding
1	Whether plaintiff proves that prima facie case is in his favour ?	No.
2	Whether plaintiff proves that balance of convenience is in his favour ?	No.

3	Whether plaintiff proves that great and irreparable loss would cause to him if the interim relief of injunction is not granted ?	No.
4	What Order ?	As per final order

REASONS

AS TO POINTS NO. 1 TO 3 :-

12. As the points 1 to 3 are interlinked, with a view to avoid unnecessary repetition these points are discussed together.

13. At the outset it is pertinent to note here that the suit is for partition and septate possession. As per plaintiff defendants 1 to 3 are co-shiers in the suit properties, as the same are their ancestral and undivided joint family properties. Considering this aspect it is clear that as per plaintiff defendants are also holding same shares in the suit properties.

14. There are total 10 properties in respect of which the suit is filed as well as prayer in this application is made. It is a case of plaintiff that though the suit properties are yet to be partitioned, for the sake of convenience plaintiff and defendants 1 to 3 are independently cultivating different portions of suit properties. However, plaintiff has not specifically described and explained as to which properties are in his hand and also in the hands of defendants 1 to 3 pursuant to the said arrangement.

15. Further, plaintiff has come to the court with the theory of outstar of his possession over the suit properties at the instance of

defendant 1 to 3. Though considering the theory of family arrangement, nothing is on record to show that the defendants are trying to expel the plaintiff from the properties being cultivating by him. Moreover, plaintiff has not specifically described the property in respect of which a fear of ouster of possession is in his mind.

16. Further, it is pertinent to note here that defendant has not denied the rights and interest of plaintiff in the joint family properties. However, he has come to the court with the theory of previous partition. Thus, mere fact that the defence of defendant is of previous partition, it can not be said that he would oust the plaintiff's possession over the suit properties.

17. In paragraph No. 7 of the application plaintiff has averred that when he asked for partition, defendants denied the same, threatening that they will not allow the plaintiff to harvest the sugarcane crop in suit properties on 20/01/2016. However, in this paragraph also plaintiff has not specifically describe the agricultural land in which he had grown sugarcane crop and in respect of which alleged threat was given by defendants, especially when he has come with the case of independent cultivation pursuant to family arrangement. Consequently, the vague pleadings by plaintiff are not enough to prima facie establish the case on the point of ouster of possession of plaintiff by defendants.

18. It is not in dispute that the suit properties are ancestral properties between plaintiff and defendants. Moreover, as per defendants the same are partitioned in year 1976 by meets and bounds

and since then plaintiff and defendants are independently cultivating the properties till today. The 7/12 extracts produced on record by plaintiff at list Exh. 3 also record the name of plaintiff and defendants 1 to 3 to the suit properties in their independent capacity.

19. Further, if the prayer by plaintiff under this application is perused carefully, it reveals that the plaintiff is seeking for interim relief of injunction restraining defendants 1 to 3 from making any development, bunding etc in the suit properties. If this aspect is considered, it is needless to mention that making any development and bunding in the suit properties would increase the values and utility of it. It will definitely not affected the suit property adversely.

20. Plaintiff has also prayed for interim relief restraining defendants from creating third party interest in the suit properties. However, admittedly the defendants being brothers of plaintiff are entitled for some share in suit properties. Thus, they are very well entitled to deal with their share in the suit properties as per their will and desire. Consequently, their rights can not be restrained by granting interim relief as prayed.

21. In addition thereto, it is pertinent to not here that besides plaintiff and defendants 1 to 3, Taibai, Hausabai and Shantabai are also heirs of Late Maruti. Thus, the suit being for partition and separation of H.U.F. properties, these three sisters constitute necessary parties to the suit. However they are not made so party.

22. In paragraph No. 4 of plaint as well as application plaintiff

has averred that aforementioned three sisters have relinquished their rights in suit properties in favour of plaintiff and defendants 1 to 3 vide registered deed of relinquishment bearing No. 1596/2006 dated 10/11/2006 and because of said relinquishment these sisters are not made party to the suit. However, plaintiff has not produced on record the said so called relinquishment deed also. Thus, prima facie it reveals that the suit is affected with the principal of non joinder of necessary parties.

23. From the aforesaid discussion it is clear that plaintiff has not establish prima facie case in his favour. Thus, the balance of convenience is also not in his favour. Further, if the application is rejected and any kind of development in the nature of suit properties is caused by the defendants, it will not cause any irreparable loss to the plaintiff's rights in the suit properties, as the alleged development would add in the valuation and utility of suit properties.

24. Hence, points 1 to 3 are answered in negative and in answer to point No. 4 following order is passed :-

ORDER

1. Application is rejected.
2. Cost in cause.

Radhanagari.
Date : 07/01/2020

(M. H. Shitole)
Civil Judge, Jr.Dn., Radhanagari.

CNR : MHKO19-000707-2016

I Affirm that, the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer	U.S.Telang L.G.
Name of Court	Civil Judge, Junior Division & Judicial Magistrate, First Class, Radhanagari.
Date of Dictation	07/01/2020
Order signed by the P.O. On	07/01/2020
Order uploaded on	07/01/2020