

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION,
DHADGAON, DIST. NANDURBAR

C.N.R.No.MHNB070007212019

Reg. Civil Suit No. 30/2019

Narsha & Ors.**Vs.** Khema & Ors.



Order Below Ex. 05

(Passed on 24th day of October 2024)

The suit is for declaration, possession and for perpetual injunction. The plaintiff moved present application for temporary injunction for restraining the defendants from creating any third party interest in the suit property till decision of the suit.

02. The plaintiffs submit, suit land bearing Gat No. 1/1 and 1/2, admeasuring 0.38 + 0.62 HR situated at Kakarpati, Taq. Dhadgaon, District Nandurbar were originally owned and possessed by their common ancestor namely deceased Bonda Sakna Bhil. On his death in the year 1947, it were inherited by the grandfather/father of the plaintiffs namely Gavlya Bonda. Thus, their forefathers and thereafter plaintiffs were owned and in cultivating possession of the suit lands. However, in the year 1973 father of defendants namely Parshi Khaalya had by gloving hands with the Revenue Officials illegally mutated their name in Revenue record of the suit land. This fact was unknown to the plaintiffs. It is first time on 20.08.2019 the defendants intruded in the suit land and illegally dispossessed the possession of the plaintiffs. Thereafter on going through the revenue record, the plaintiffs came to know about false entries in the name of defendants' father. As defendants denied to redeliver the

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possession of the suit land to the plaintiffs, they have constrained to file this suit. However, the plaintiffs apprehended that the defendants would create third party interest before final adjudication of the suit, hence by this application prayed for temporary injunction for not to create any third-party interest till decision of this suit.

03. The defendants replied the application by filing written statement at Exh. 21. They admitted that the suit land was originally owned and possessed by deceased Bonda Sakna Bhil. Further they contended that one Biju was daughter of Bonda Sakna Bhil, who was wife of grandfather of the defendant namely Khaalya Chandya. Therefore, in the year 1973, there was a partition effected by Gavlya Bonda and Sama Gavlya and in that suit lands were given in the share of Biju Khaalya. Further relevant entry no. 72 was recorded in revenue record of the suit lands on 16.04.1973. Thus, the defendants were in cultivating possession of the suit lands peacefully thereafter. The defendants are owned and possessed the suit lands, therefore the plaintiffs accrued no right to claim injunction against true owner and even they cannot restrain the defendants from creating any third-party interest in the suit lands. Thus, the application is devoid of merits liable to be rejected.

04. Heard both sides. Perused application and reply. Perused record of the case and material adduced by both sides. Following points spring up for determination, against each of them I have recorded my findings for the reasons discussed below-

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<u>Sr.No.</u>	<u>PONITS</u>	<u>FINDINGS</u>
1.	Do the plaintiffs prove their prima facie case ?	Yes
2.	Do the plaintiffs prove the balance of convenience in their favour ?	Yes
3.	Do the plaintiffs prove that irreparable loss would cause, if the application is rejected ?	Yes
4.	What order ?	Allowed

REASONS

Point No. 1:

05. It is not disputed that the suit lands originally owned by Bonda Sakna Bhil. It is also not disputed that Bonda Sakna Bhil had sons namely Gavlya and Handya. However, it is first time in the written statement contended by the defendants that Bonda Sakna Bhil had one daughter Biju. It is also further contended by the defendants that in partition by son of Gavlya namely Sama Gavlya, he had given share of suit lands to Biju. Further it is also contended that Biju was wife of grandfather of the defendants. Thus, from the pleading of the defendants it is came out that there is relation between plaintiffs and defendants and in partition suit lands come to the share of daughter of Bonda Sakna Bhil. The relevant revenue entries and other documents produced along with the plaint fortified the ownership and possession of Bonda Sakna Bhil and thereafter of the defendants' forefathers. Now it is a matter of trial to find out whether there was partition in the year 1973 and in that Biju being daughter of Bonda Sakna Bhil obtained her share.

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06. On perusal of written statement nowhere I found specific denial by the defendants that they are not going to create third-party interest in the suit lands during pendency of suit. Considering the fact of original title in the name of Bonda Sakna Bhil who was grandfather of plaintiffs, the plaintiffs definitely seem to have interest in the suit lands. As in the present suit the plaintiffs are challenging the mutation entry in the name of defendants' father, they need to be given fair chance to fight at the fullest till final adjudication.

07. Under such circumstances, the apprehension raised by the plaintiffs that the defendants would create third party interest in suit land cannot be ruled out. Though this is not stage to discuss on merits of the case, but I found prima facie case of the plaintiffs. After all it is a matter of trial and material which would come on record. Thus, for the above entire discussed reasons, I found the plaintiffs have proved their prima facie case. Hence, I am inclined to answer point No. 1 in affirmative.

Point No. 2 to 4:

08. In absence of specific denial by the defendants as to creating third-party interest in the suit lands, I am forced to consider that the apprehension raised by the plaintiff cannot be ruled out. Hence, I found the balance of convenience is in favour of the plaintiffs and if the instant application is rejected, then it would definitely cause irreparable loss to the plaintiffs. On the other hand, if the application is allowed and the defendants

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would have restrained from creating any third party interest till decision of the case, it would not cause any irreparable loss to the defendants. Accordingly, I am answered point No. 2 & 3 in affirmative. Eventually, in answer to Point No. 4, I pass following order:

ORDER

Application is allowed.

- i. Defendants are hereby temporarily restrained from creating any third party interest in the suit property by themselves or through others on their behalf till disposal of this suit.
- ii. The costs would be in main cause.

Dhadgaon,
October 24, 2024

(B. S. Wadhai)
Civil Judge Junior Division
Dhadgaon, District Nandurbar

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“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER.”	
09/09/2024 UPLOAD DATE AND TIME	Rajesh R. Nikam Name of the Stenographer (Gr.-III)
Name of the Judge	Shri. B. S. Wadhai
Date of pronouncement of order	24/10/2024
Order signed by P.O. on	24/10/2024
Order uploaded on	24/10/2024