



ORDER BELOW EXH. 05 IN R.C.S. NO.53/2019

(Passed on dt. 17.03.2022)

01. Present application made by plaintiffs/Applicants to restrain defendant from alienating suit properties under Order- 39, rule-1 of the Code of Civil Procedure.

Brief facts of the case of plaintiff are as under :-

02. It is contention of applicants/plaintiffs that deft No. 1 Syed Mukhadar S/o Syed Ismail, deft No.10 Syed Sharif S/o Syed Ismail and deceased Sayad Ahamad S/o Syed Ismail are elder brother of plaintiff. Defendant no. 3, 4, 6 to 9 are children of deceased Sayad Ahamad S/o Syed Ismail. Deft No. 5 and 11 are sons of Deft No.1. The brother of plaintiff namely deceased Syed Ahamad S/o Syed Ismail has died on 27.11.2017. deft No.2 is wife of deceased Syed Ahamad S/o Syed Ismail deft No. 6 to 9 are daughter of deceased Syed Ahamad S/o Syed Ismail.

03. Plaintiff, Deft No.1, Deft No.10 and Syed Ahamad S/o Syed Ismail were doing agriculture as well as wood business, they lived together till 1999. Out of their joint income, they have purchased land Gut No.34 admeasuring 0 H 50 R in the name of elder bother deft no.1, Land Gut No.34 admeasuring 0 H 49 R in the name of deft No.3 and Land Gut No.36 admeasuring 0 H 34 R in the name of deft No. 5. (hereinafter these properties are referred as suit properties).

04. In year 1999 they decide to fix the shares of property, on dt. 21.09.1999 they executed document among themselves, it was declared that the suit properties are joint and that the parties will have

Syed Rashid Vs. Syed Mukhadar & Oths.

equal share in the same. However, there no partition by metes and bound was effected. The shares were defined but shares were not actually separated. The plaintiff, Syed Ahmed and defendant no.10 have submitted application to the Tahsildar and other revenue officers on the basis of the document dt. 21.09.199 stating that the suit properties are having equal share between the four brothers and that their names may be mutated in the revenue record. Accordingly, by virtue of mutation no. 2061, 2072, 2073 dt. 14.03.2011, mutation entry was taken in favour of plaintiff, Syed Ahmed & deft no. 10, said entries were taken in other right columns of the 7/12 extracts of the suit properties.

05. It is also contention of plaintiff that value of the suit properties is increased. Deft no. 1 became dishonest. He has filed proceedings before Tahsildar and S.D.O. for cancellation of mutation no. 2061, 2072 and 2073. Ultimately S.D.O. Kinwat has passed orders on 18.07.2016 and canceled the entries taken in the name of plaintiff, but Syed Ahmed and deft no. 10 in respect of suit properties. Thereafter, the plaintiff has filed appeal to the Collector, Nanded against the Judgment and order of S.D.O

06. There, no actual partition and separate possession of the suit properties has been effected. However, deft.No 1, 3, 5 & 11 are trying grab the suit properties by taking undue benefit of revenue record, the also trying hard to sell the suit properties without consent and to the exclusion of the plaintiff. Plaintiff will suffer great and irreparable loss if the defendants sold the suit properties. The plaintiff asked the defendant to carryout and effect the partition and separate possession of suit properties, however, defendants refused on 02.10.2018 & 01.06.2019, hence the plaintiff filed present application for temporary injunction to

Syed Rashid Vs. Syed Mukhadar & Oths.

restrain defendant from alienating suit properties.

Brief facts of the case of defendants are as under :

07. Deft No 1,3,5 and 11 appeared and filed their written statement vide Exh.19. Deft No 1,3,5 and 11 have filed Pursis Exh.21 to consider there W.S. as say to Exh.5. They have denied the contention of plaintiff they have denied that plaintiff and his brother jointly purchased suit property. Plaintiff, Syed Ahmad and deft No. 10 with collusion of revenue authorities taken wrong entries behind back of defendant no. 1, 5, 11. Defendants filed appeal before S.D.O. said was allowed, accordingly, mutation entry has canceled which was taken in the name of plaintiff. Plaintiff has no right suit properties. Deft No 1,3,5 and 11 have possession of suit property. Plaintiff has filed false suit and application. Plaintiff has not possession over entire suit property. Accordingly, they prayed to reject the application.

08. Ongoing through contentions and submissions of both sides, following points arise for my determination and I record its findings thereon, with reasons, as under-

Sr. No.	Points	Findings
01)	Do plaintiffs prove that they have made out prima-facie case ? In Negative
02)	Do plaintiffs prove that balance of convenience lies in their favour ? In Negative
03)	Do plaintiffs prove that they would suffer irreparable loss, if temporary injunction is not granted as prayed for ? In Negative
04)	What order ? As per final order

RESONS

09. Heard Learned counsel D.G. Ade for plaintiff and Ld. Counsel B.G. Kale for defendants. Perused record and proceedings. I have also gone through the relevant provisions of the Code of Civil Procedure (CPC).

AS TO POINT NO. 1 :-

10. So far as this point is concerned, it is required to be seen as to what is a prima-facie case. In establishing a prima-facie case, plaintiff need not establish his title. It would be sufficient for him to show that he has a fair question to raise as to existence of his right. While examining the question of prima-facie case the Court has to satisfy that the claim was not frivolously vexatious, in other words there is a serious question to be tried.

11. According to Plaintiff, suit properties were purchased from joint income of their joint family. There no actual partition taken place between defendant and plaintiff. Plaintiff also filed 7/12 abstract of Gat no. suit properties vide Exh. No.4. It appears from 7/12 extract of Gat no. 34 that 0 H 50 R land stands in the name of Syad Mukhdhar Syed Ismail, it appears from copy of Mutation entry No. 2072 of village Chikhali that name of Syed Ahmad, Syed Sharif and Syed Rashid was mutated in the name of additional rights column.

12. It appears from 7/12 extract of Gut no. 35 that 0 H 50 R land stands in the name of Syad Safadar Syed Mukhdar, it appears from copy of mutation entry no. 2061 of village Chikhali that name of Syed Ahmad, Syed Sharif and Syed Rashid was mutated in the name of additional rights column.

13. It appears from 7/12 extract of Gat no. 36 that 0 H 50 R

Syed Rashid Vs. Syed Mukhadar & Oths.

land stands in the name of Syad Sikandar Syed Mukhadar, it appears from copy of mutation entry no. 2073 of village Chikhali that name of Syed Ahmad, Syed Sharif and Syed Rashid was mutated in the name of additional rights column.

14. It appeared from the defendants has contention that the plaintiff collusion with other wrongly mutated his name in additional right is 7/12 extracts. Defendant no. 1, 5 and 11 has preferred appeal before S.D.O. Kinwat, who has canceled said mutation entries. Defendant also filed copy of order passed by S.D.O. vide Exh.42. It appears from S.D.O. dt. 18.07.2016 that S.D.O. has canceled mutation entries taken in respect of Gut no. 34, 35 and 36. It appears that the Upper collector Nanded also conform the order of S.D.O. defendant also filed 7/12 extracts of Gut no. 34, 35, 36 for year 2018-19 in which name of plaintiff has not appeared.

15. Plaintiff has filed partition deed vide Exh.36, it appears from said that there no description of any property has been given in said partition deed. Therefore, it can not consider that the suit property was in respect of subject matter of said properties. Plaintiff has not explain why the description of suit property has not mentioned in partition deed placed by the plaintiff.

16. Plaintiff has come with story that in years 1991, 1993 and 1996, plaintiff along with his remained brother jointly purchased three properties situated in Gut No. 34,35 and 36(suit properties) of village kothari Chikhali, Tq.Kinwat. However, plaintiff has not filed any sale-deed on record establish said fact. Therefore, without evidence, at this stage, it will not proper to consider that suit properties was purchased out of joint income of plaintiff and his brother, moreover, plaintiff has

Syed Rashid Vs. Syed Mukhadar & Oths.

not explain why he has not filed copies of sale-deed on record by which said suit properties was purchased. Therefore, it prima-facie papers that plaintiff has suppressed material facts in respect of suit property.

17. To consider the prima-facie case it is duty of Court to look out prima-facie possession of the parties and it is to be consider the nature of danger or obstruction caused by other side. Plaintiff has suppressed material facts of suit property. Accordingly, it prima-facie appears that plaintiff have not come with clean hands. In such circumstances and above discussion, I do not find plaintiff have a prima-facie case. Accordingly, I recorded point No. 1 in negative.

AS TO POINT NO. 2 :-

18. 'Balance of convenience' means the comparative mischief or inconvenience to the parties. In arriving at the balance of convenience, the court has to weigh the mischief likely to be caused to applicant, if the interim relief is refused. At the same time, it has also to compare the injury likely to be caused to the other side, if the interim relief is granted.

19. As regards balance of convenience and inconvenience, if the defendants are restrained by an order of injunction from obstructing the plaintiff and ultimately the suit fails, they are to suffer more than that will be suffered by the plaintiff. If the injunction is refused and suit ultimately succeeds, the plaintiff cannot suffer loss or injury.

20. In view of discussion supra, I am of the considered opinion that the balance of convenience does not lie in favour of plaintiff. Hence, I record negative finding of point No.2.

AS TO POINT NO. 3 :-

21. An irreparable injury means such injury which cannot be

Syed Rashid Vs. Syed Mukhadar & Oths.

adequately remedied by damages. The remedy by damages would be inadequate if the compensation ultimately payable to the plaintiff in case of success in the suit would not place him in the position in which he was before injunction was refused.

22. if the temporary injunction is grant then defendant would have sustained more loss compare to the plaintiff. Accordingly, I do not find that plaintiff would suffer irreparable loss, if present application is rejected. Moreover, In view of discussions and findings of points No. 1 and 2, I am of the considered opinion that the plaintiff would not suffer irreparable loss or injury, if temporary injunction is not granted as prayed for. Hence, I record negative finding of point No. 3.

AS TO POINT NO. 4 :-

23. The phrases prima-facie case, balance of convenience and irreparable loss are not rhetoric phrases for incantation but words of width and elasticity to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. In the instant case, the plaintiff failed to prove these three points. Therefore, the temporary injunction is not required to be granted against the defendants. In the result, following order is passed.

-O R D E R-

- 01) The application of temporary injunction is rejected.
- 02) Cost in cause.

MHND180009002019

R.C.S. No.53/2019

::8::

ORDER / EXH. 05

Syed Rashid Vs. Syed Mukhadar & Oths.

Certificate

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 : Chitmalwar S.M.
Court Name : Court of C.J.J.D., Kinwat
Date : 17/03/2022
Order signed by
the Presiding Officer on : 17/03/2022
Order uploaded on : 21/03/2022

XXXX