


MHND270007622021	RCS No.78/2021
	Chandrabhan Vs. Rajaram & Others

ORDER PASSED BELOW EXH.05
(PASSED ON 02nd FEBRUARY, 2024)

The present application is filed under Order 39, Rules 1 and 2 of the Code of Civil Procedure (CPC).

2] The plaintiff, in this case, seeks the issuance of a temporary injunction to restrain defendant No. 1 and 2 from interfering and obstructing into his peaceful possession over suit land A and B and he also seek relief of temporary injunction against them from alienating those properties.

3] Remarkably, the defendant no.1 despite being properly served, has chosen not to respond or file a written statement in defence. As a result, he has not contested the suit or the application for a temporary injunction. Defendant No.2 filed his written statement and say to this application. Whereas defendant No.3 has not filed any say despite service of summons.

4] Heard Ld. Advocate for plaintiff at length, perused plaint and documents.

5] Following points arised for my determination and I have recorded my findings thereon as under :

Sr.No.	Points	Answers
1.	Whether plaintiff is having prima	Yes

	facie case ?	
2.	Whether balance of convenience lies in favour of plaintiff ?	Yes
3.	Whether plaintiff will suffer irrpable loss, if injunction refused?	Yes
4.	What order ?	Application is partly allowed.

REASON FOR

POINT NO.1 TO 3

6] Point No.1 to 3 are interlinked with each other, therefore, in order to avoid repetition I am taking them together for its discussion.

7] The plaintiff's case revolves around the assertion that they are blood relatives interse. The father of plaintiff and defendant No.1 and 3 i.e. Gyanoba Bhujanga Gavhane was Karta of their joint Hindu family; who has acquired and inherited land in Gut No.94 admeasuring 81 R, Gut No.79 admeasuring 1 H 64 R, Gut No.87 admeasuring 1 H 94 R situated at Nageli, Tq.Mudkhed. Which he had owned and possessed during his life time and cultivated with the help of his sons i.e. plaintiff and defendant No.1 and 3. The land Gut No.77 admeasuring 05 R and land Gut No.88 admeasuring 4 R are having water well which are commonly used by Gyanoba and his other three brothers and their successors. Gyanoba partitioned his land from Gut No.94, 79 and 87 amongst himself and his three sons in the year 1979. Accordingly he executed partitioned and kept 0 H 81 R land in his own name from Gut No.94 and distributed 97 R land in the names

of plaintiffs and defendant No.1 and 3 from Gut No.87, 79 and merely kept 0 H 67 R land of Gut No.79 in the name of defendant No.1. he decided and directed plaintiff, defendant No.1 and 3 for equal mutation of 81 R land which was kept of his name and equal mutation of excess land of 67 R which was in the name of defendant No.1 from Gut No.79 after his death. During life time of Gyanoba he decided and given equal share of lands owned by him of Gut No.94 to the extent of 27 R to each plaintiff and defendant No.1 and 3. He also put their sons in equal share and possession to the extent of 0 H 22 R land in Gut No.79. Upon excess share of 67 R mutated in the name of defendant No.1 as per family arrangements. Thus plaintiff became owner and possessor of 27 R land in Gut No.94 out of 0 H 81 R which is still standing in the name of defendant No.1. He also become owner and possessor of 0 H 22 R land in Gut No.79 out of 1 H 64 R which is at present standing in the name of defendant No.2. After partition Gyanoba was residing with defendant No.1 for some period during which defendant No.1 got mutated entire area of 81 R land of Gut No.94 in his name by fraud and deceiving Gyanoba without his consent. Upon which quarrel was raised and defendant No.1 Rajaram executed the agreement in favour of Gyanoba on dated 05.07.1984 narrating therein about getting 54 R land from Gyanoba and in its return he agree to look after Gyanoba but he didn't and therefore Gyanoba started residing with plaintiff and defendant No.2. plaintiff and defendant No.3 then purchased the land admeasuring 0 H 80 R from Gut No.94 from Mahadu Bhujanga and Bapuji Bhujanga and kept the said land in the name of Gyanoba due to love and affection which later on Gyanoba transferred the same

equally between plaintiff and defendant No.3. Later on defendant No.3 sold that 40 R land to Vimalbai. Gyanoba died on 02.04.2005 and since then plaintiff is continuously demanded his share from suit land A and B from defendant No.1 and 2 but defendant No.2 is avoiding to transfer paper ownership of suit lands in his favour. It is also submission of plaintiff that, in order to avoid his share the defendants are trying to deprive him from paper ownership. They are also trying to alienate the suit land A and B to third person. He is in long standing possession of suit land as per the partition took place in the year 1979. On 25.07.2021 the defendant flatly denied his right hence he constrained to file the suit. He is having priam facie case and balance of convenience lies in his favour. If defendants are not restrained he will suffer irreparable loss.

8] Defendant No.2 filed his reply and submitted that, Gyanoba Gavhane has partitioned his land in Gut No.94, 79 and 87 amongst himself and his sons in the year 1979. He also kept 81 R land in his name and further distributed 97 R land to his three sons from Gut No. 87 and 78 but he denied rest of the contents such as keeping excess land 0 H 67 R land from Gut No.79 in the name of defendant No.1. It is their submission that the plaintiff has filed present suit to grab 0 H 67 R land from Gut No.79 and 0 H 27 R from Gut No.94 for which neither he is entitle nor he had any right to interfere to obstruct in to peaceful possession of defendant No.2.

9] Plaintiff filed 7/12 extract of Gut No.94, 79 and 87. He also filed mutation entry No.40 and one agreement of dated

05.07.1983. Defendants have not filed on their behalf. It appears that from 7/12 extract of land Gut No.94, 79 and 87 the plaintiff Chandrabhan is having 40 R land in Gut No.94 whereas defendant No.1 Rajaram is having 81 R land and wife of plaintiff is having 40 R land. In Gut No.79 defendant No.2 is having 1 H 56 R land. In Gut No.87 plaintiff is having 97 R land and one Sambhaji Shamrao Puyad is having 97 R land. Mutation entry no.40 shows that, Gyanoba Bhujanga Partitioned his land from Gut No.94, 79 and 87 amongst himself and his sons. As per said mutation land in Gut No.94 admeasuring 81 R land kept by Gyanoba for himself, Rajaram Gyanoba was given 1 H 64 R land from Gut No.79. Chandrabhan and Prabhu were given 97 R land each from Gut No.87. Copy of agreement filed by plaintiff which is not readable.

10] This is a suit for declaration that the plaintiff is owner in possession of land admeasuring 27 R land out of 0 H 81 R standing in the name of defendant No.1 in Gut No.94 (suit land A) and land admeasuring 22 R out of 1 H 64 R standing in the name of defendant No.2 from Gut No.79 (suit land B). Plaintiff in his suit had submitted that after their partition his father equally distributed the suit property amongst them wherein land admeasuring 27 R from Gut No.94 is given to plaintiff and defendant No.3 equally. Plaintiff also had given 22 R land from Gut No.79 from the excess share of defendant No.1. Accordingly he became owner of suit land A and B but regarding his possession over excess land in Gut No.94 and 79 the plaintiff has not given any priam facie proof. The plaintiff seek two relief one is restraining defendants from causing interference and obstruction

over suit land A and B. He also prayed to restrained defendant No.1 to 3 from alienating suit property. Regarding possession of plaintiff over suit land A and B there is no prima facie proof. Plaintiff also not filed any proof regarding obstruction in to his possession. Therefore, he is not entitled for the relief of temporary injunction restraining defendant No.1 to 3 from causing any sort of obstruction. Whereas another prayer made by plaintiff is that the defendants are paper owner of his property in this regard he is having apprehension that they will create third party interest in the suit property. It appears from record that defendant No.1 is having 81 R land in Gut No.94 and defendant No.2 is having 1 H 56 R land in Gut No.79. Plaintiff came with declaration of his ownership. Defendant No.2 admitted prior partition taken place amongst them. Mutation entry also discloses that, his father Gyanoba had kept 81 R land from Gut No.94. It also appears that, vide mutation entry no.56 name of defendant No.1 came to be mutated in Gut No.94 admeasuring 81 R land. But mutation entry No.56 is not on record. In such circumstances the plaintiff is having prima facie case. If defendants are restrained from alienating suit property it will not cause any prejudice to them. Moreover, if they are not restrained there will be multiplicity in the proceedings. Hence, present application is liable to be partly allowed. Accordingly, I answered point No.1 to 3 in the Affirmative.

AS TO POINT NO. 4:-

11) In view of my affirmative answers as to points No. 1 to 3, the plaintiff is entitled for relief of temporary injunctions against

the defendants. Hence, in order to answer point No.4, I pass following order.

:: ORDER ::

1	Therefore, the application under Order 39, Rules 1 and 2 of the C.P.C is hereby partly allowed, and a temporary injunction is granted to restrain Defendant No. 1 to 3 from alienating any portion of the suit land to any third party until the final disposal of the suit.
2	The prayer of plaintiff about restraining defendants from causing any sort of obstruction in his possession over suit land is hereby rejected.
3	Costs-in-cause.

Pronounced in open Court.

Place: Mudkhed
Date: 02.02.2024

Sd/-
(S.B.Dhembare)
Civil Judge (Jr.Dn.)
Mudkhed Dist. Nanded.

CERTIFICATE

I affirm that the contents of this P.D.F. File judgment are same word to word, as per the original judgment.

Name of the stenographer	:	Ashok. A. Totre
Court Name	:	J.M.F.C. Mudkhed
Date	:	02-02-2024
Judgment signed by the		
Presiding Officer on	:	06-02-2024
Judgment Uploaded on	:	06-02-2024