

RCS No.73/2014
Sanjay Vs. Aadesh

ORDER BELOW EX. 5
(Passed on 29th August, 2015)

1. Applicants have filed this application for grant of temporary injunction under Order 39 Rule 1 and 2 read with section 151 of civil procedure code.
2. The non applicants have filed their reply vide Ex. 14.
3. Heard Ld. counsels for both parties.
4. From the rival contentions, following points arose for my determination and I have recorded my findings with reasons against them as follows :

<u>SR.NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether applicant/plaintiff has a prima-facie case ?	...Yes.
2	Whether the balance of convenience lies in favour of applicant/plaintiff?	... No.
3	Whether irreparable loss will be caused to applicant/plaintiff if application is rejected ?	... No.
4	What order?	..As per final order.

REASONING

AS TO POINT NOS. 1 TO 3 :-

5. All the three points are connected with each other therefore

to avoid repetition they are considered cumulatively.

6. The learned counsel for applicants Adv. Pongde argued that the suit properties are the ancestral properties of deceased Mahadeo. The Suit properties are yet to be partitioned. Applicant No. 1 came to notice that non applicants have mutated the field Gat No. 12/1 in their names by taking the assistance of documents perforating to be partition deed dated 25/5/2009. The entire process of taking mutation in the name of non applicants is illegal and without following due process of law. The applicants have learnt that, the non applicants are trying to dispose of field Gat No. 12/1 without any reason so as to deprive applicants from their legal rights. If the Non applicants are not restrained they shall create third party interest and in that case, applicant shall suffer irreparable loss. Therefore temporary injunction application be granted in favour of applicants.

7. On the other hand, the counsel for N.A.'s Adv. Shri Mahale submitted that the suit is bad for partial partition, barred by limitation and bad for non joinder of necessary party, therefore applicants have no prima facie case. Further he submitted that, after death of mother Devkabai on 3/9/2005 the applicant No.1 to 3 substituted the name of their mother and name of applicant No. 4 in revenue record of Gat No. 12/2 as legal heirs of deceased Devkabai and applicant No. 1 in collusion with Talathi changed the entire revenue record. Instead of challenging mutation entry in this respect by applicant No. 5, these non applicants have falsely implicated and in such circumstances, if temporary injunction application is granted in favour of applicants, it

will be prejudiced the rights of Non applicants and they shall suffer more loss. Hence it be rejected.

8. After going through entire pleading of both parties and document available on record it transpires that there is no dispute that old S.No. 13 (New S.No. 12/1, Area 3.24 H.R. and S.No. 12/2, Area 1.61HR) was owned by deceased Mahadeo and plaintiffs and defendants are the successors of the deceased Mahadeo. According to defendants, the mother of plaintiffs No. 1 to 3 deceased Ramabai and plaintiff No. 4 Kamlabai have relinquished their share in the Suit property in the year 1987 and therefore they have no right to claim partition. Thereafter the suit property was partitioned among deceased Madhukar, his mother Devkabai and plaintiff no. 5 Malabai and in that partition deceased Madhukar was allotted Area 3.24 HR and Devkabai and Malarai were jointly allotted 1.62HR land out of S.No. 13 (New Nos. 12/1 and 12/2). After death of Madhukar, his legal heirs i.e. defendant No. 1 to 4 have become the owners of S.No. 12/1, Area 3.24HR and they are in possession.

9. The 7/12 extract filed by plaintiffs also show that the S.No. 12/1 is in the name and possession of defendants and S.No. 12/2 is in the names of defendants and others and in their possession. The mutation entry filed by plaintiff also reflects that the land is divided and allotted in view of partition deed. Whether partition deed is genuine or bogus it will decide on merit but at this stage the documents themselves show that the original S.No. 13 (S.No. 12/1 and S.No. 12/2) are mutated separately in the name of plaintiffs and

defendants and their possession is also shown as separate. The suit is for declaration, partition, separate possession and permanent injunction and the Suit property is in the possession of plaintiff as well as in the defendants therefore it can be said that the applicants have made prima face case but there is nothing on record to show that the defendants are trying to create third party interest in the Suit property. So it can not be said that balance of convenience lies in favour of applicants and if application is rejected, there is no possibility of causing irreparable loss to the applicants. Therefore, I answer point No. 1 in affirmative and point No. 2 and 3 in negative.

10. At the same time, both the parties orally submitted that, they will not create third party interest in the properties which are in their possession therefore considering the nature of suit, it will be just and fair to pass the order to both parties to maintain the status quo till disposal of the suit.

Accordingly, I proceed to pass following order :-

ORDER

1. Application stands rejected.
2. Both parties are directed to maintain status quo regarding the suit property S.No. 12/1 and S.No. 12/2 till disposal of suit.
3. No order as to costs.

Umrer.
Dt.29/08/2015

(Ms. V.R.Jambhule)
Civil Judge(Jr. Dn.), Umrer.