

Reg.C.S. No.55/2013
Ratiram Vs. Deokabai

ORDER BELOW EXH.15
(Passed on 22/08/2014)

Plaintiffs (applicant) have filed instant suit for declaration and possession thereby declaring that he is owner of suit land and for possession thereof. The plaintiffs have filed instant application under Order 39 Rule 1 and 2 of Civil Procedure Code for grant of temporary injunction from restraining defendants from creating third party interest in the suit land. He has submitted that one Bhaiyya Ramteke was original owner of agricultural land bearing S.No. 375 area 1.76 H.R. situated at Bhandarbodi Tah. Ramtek District Nagpur. It is subject matter of suit, (hereinafter described as "suit land").

2. Plaintiff has submitted that suit land is originally owned by Bhaiyya Ramteke. Bhaiyya has two sons i.e. Goma and Soma. Goma has four sons i.e. Doma, Mahadeo, Sadashiv, Sitaram. Plaintiffs are the legal heirs of Sitaram and defendants are the legal heirs of Doma. Agricultural land i.e. old S.No. 407, 411, 409 and 326/1, 326/5, 326/8 and new No. i.e. S.No. 407, 409 and 411 are in possession of Sitaram since last 17 to 18 years. Similarly, old S.No. 326/4, 326/7 i.e. new No. 406 and 412 are in possession of Sadashiv. Sadashiv sold his land to father of plaintiffs i.e. Sitaram. In 1954-55, agricultural land had been amalgamated. Accordingly, S.No. 406,409,411 and 412 were joint together thereby become new S.No. 375 which is subject matter of suit.

3. Sadashiv was died issueless, therefore plaintiff became absolute owner of suit land. However, defendants by fraudulently had mutated their names in the revenue record over suit land. Now by taking undue advantage of their names in the 7/12 extract of suit land, plaintiff are tried to alienate suit

land thereby creating third party interest. Hence, plaintiffs have filed instant application for restraining defendants from creating third party interest.

4. Defendants have filed written statement (Exh.9) thereby denied contents in application in toto. It is not disputed that suit land is ancestral property of plaintiffs and defendants, relation between parties are also not disputed. Similarly, it is not disputed that Sadashiv died issueless. Defendants have further submitted that after death of Sadashiv, this property should be equally divided between their brothers i.e. Sitaram and Doma. However, plaintiff had grab the entire property of Sadashiv. At the time of amalgamation S.No. 375 i.e. suit land had been come forth by adding property of Sadashiv therein. Therefore, plaintiffs cannot become absolute owner of suit land. Names of defendants are rightly mutated in the revenue record, being owner thereof. Hence, application be rejected.

5. Heard Ld. counsel for both parties and on considering evidence available on record, following points arose for my determination and I have given findings of these points alongwith reasons thereof as under :

<u>Points</u>	<u>Findings</u>
(i) Whether plaintiff has prima facie case ?	Affirmative
(ii) Whether balance of convenience lies in favour of plaintiff ?	Affirmative
(iii) Whether plaintiff has caused irreparable loss, if temporary is not granted in his favour ?	Affirmative
(iv) What order ?	Application is allowed

REASONS

6. It is admitted position that suit land is ancestral property of both parties. Relation between parties are also not disputed. Similarly, Sadashiv died issueless is also not disputed.

As to points Nos.1 to 3 :

7. All these points are interlined with each other, therefore, I discussed them with together.

Plaintiffs have relied on 7/12 extract of suit land. These documents i.e. 7/12 extract for the year 1993-94 in respect of suit land shows name of the Sitaram i.e. father of plaintiffs as a owner. Similarly, 7/12 extract for the period 2003-2007 in respect of suit land shows that plaintiffs are owner of suit land being legal heirs of Sitaram. Sankalan Patrak for the year 1978 shows that suit land S.No. 375 had been prepared by amalgamating old S.No. 406, 411, 412 and 413. As per record of amalgamation S.No. 326/4, 326/7 shows in the name of Sadashiv. Further, it is mentioned that Sitaram has crated tenancy right over these land of Sadashiv. Thereafter, 7/12 extract in respect of suit land for the year 2011-12 shows name of defendant Nos. 1 to 3 as a owner of property. After perusal of documents, it revealed that the entries of defendant Nos. 1 to 3 had been taken vide order of Additional Collector, Nagpur dated 16.07.2008 in the Rev. Appeal No. 49/2007-08. Defendants have not filed any document in support of his contents.

8. On going through the documents available on record, it transpired that initially suit land was shown in the revenue record in the name of Sitaram. After death of Sitaram, name of plaintiffs being legal heirs of Sitaram had been mutated therein till 2007. However, in 2008 names of the plaintiffs had been deleted by inserting names of the defendants vide order in revenue appeal

passed by Addl. Collector. Documents i.e. Sankalan Patrak for the year 1978 shows that suit land S.No. 375 had been prepared by amalgamating land of plaintiffs i.e. S.No. 407, 411 and land of Sadashiv i.e. 406, 412 which means that which clearly transpired that S.No. 375 had been prepared by amalgamating land of plaintiff and land of Sadashiv. On this point, Ld. counsel for plaintiffs has submitted that Sadashiv sold his land to Sitaram. Documents available on record shows that Sitaram has created right of tenancy over land of Sadashiv by paying tenancy charges. Ld. counsel for plaintiffs submitted that in this way, plaintiffs become absolute owner of suit land. Mere mentioning names of the defendants in revenue record has not created any right to the defendants to alienate in the suit land and for creating third party interest. After going through documents, plaintiffs have rightly made out prima facie case for not alienating suit land at the hands of defendants. Mere recording of defendant name in the revenue record will not create any right to the defendants over suit land. Hence, balance of convenience is also in favour of plaintiffs. Ultimately, if the suit land had been transferred at the hands of defendants, plaintiffs will cause irreparable loss. Hence, I answered these points in the affirmative.

As to point No. 4 :

9. In view of findings of points Nos. 1 to 3, it is necessary to grant temporary injunction in favour of plaintiff. Hence, I pass following order.

Order

- (I) Application is allowed.
- (II) Defendants (Non-applicants) is hereby restrained from creating third party interest by alienating or otherwise suit land till the decision of suit.

Ramtek
Date 22/08/2014. .

(S. G. Chimankar)
Civil Judge (Jr. Dn.), Ramtek