



Special Civil Suit No. 154/2023

(Old Special Civil Suit No. 92/2023)

Mandabai Rangrao Thakre vs Ramrao Sadashiv Taywade
(Appearance for plaintiff Ld. Advocate Shri. P. B. Awachat
Appearance for defendants Ld. Advocate Shri. M. D. Paliwal)

ORDER BELOW EXH.5

(Passed on this 02th Day of April, 2024)

This is an application by plaintiff under Order 39 Rule 1(c) of Code of Civil Procedure for an injunction restraining defendants from alienating the suit properties to third party as described in the plaint, till the decision of the suit.

2. The case of the plaintiff can be summarized as follows-

The plaintiff is a daughter of defendant No.1. Defendant No.2 and 3 are her real brothers. The defendant No.4 to 6 are real sisters of the plaintiff. The defendant No.7 was her real brother who expired and survived by defendant No. 7(1) to 7(3). The defendant No. 8 and 9 are children of her brother i.e. defendant No.2.

3. The suit properties being mentioned at Sr. No. A, B, C, D, E are ancestral properties, whereas, suit properties being mentioned at Sr. No. E(1) and F are purchased out of joint family nucleus/ income. After the death of grandfather, defendant No.1 had partitioned the suit properties between his sons and himself.

4. However, defendant No.1 had not allotted any share to the plaintiff at the time of partition. Defendant No.1 had also executed gift deed in respect of suit property bearing Survey No.82 and Plot No.21 in favour of defendant No.2 and 9 and Hansraj Taywade respectively.

5. The plaintiff has undivided 1/8th share in the suit properties and house properties. However, defendant No.1 had executed partition deed and gift deeds without her consent and thereby, tried to deprive her from her share. Therefore, under these circumstances, she is constrained to file present application.

6. On the other hand, the defendant No. 1, 2, 8 and 9 have filed their say below Exh. 9 and have denied the claim of the plaintiff. However, defendants have admitted contents regarding partition deed and gift deed. It is specific case of defendants that Survey No. 38, 43, 82 and 111 are self acquired properties of defendant No.1. Therefore, the plaintiff has no right in those properties. The defendant No.1 and 2 have constructed house in the suit property bearing plot No.21, by their own income. Therefore, under these circumstances, present application may be rejected.

7. Considering the nature of controversy, the following points arise for my determination and I have recorded my findings thereon with reasons as follows :-

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether there is prima facie case in favour of Plaintiff ?	In the negative.
2.	Whether there is balance of convenience in favour of plaintiff ?	In the negative.
3.	Who will suffer irreparable injury, if injunction is granted ?	Defendants.
4.	What order ?	Application is rejected.

REASONS

AS TO POINT NO. 1 TO 3 :-

8. All points are interconnected to each other, therefore, they are required to be taken up together.

9. Before considering prayer of plaintiff, the settled position of law on this point, needs to be mentioned herein. The cardinal principles for grant of temporary injunction were spelt out by the Hon'ble Apex Court in landmark judgment of **Dalpat Kumar vs. Pralhad Singh [(1992) 1 SCC 719]**, wherein it has held that-

“It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it”.

10. It is pertinent to note here that the party is not entitled to an order of injunction as a matter of right. The Hon'ble Apex Court in the case of **Shiv Kumar Chadha Etc. Etc. vs. Municipal Corporation of Delhi [1993 SCC (3) 161]** reiterated the said dictum and held that;

“It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff

during the pendency of the suit”.

11. On this settled legal position, it is required to note here that it is the contention of plaintiff that some of the suit properties are ancestral properties and some properties are purchased out of joint family nucleus / income. Whereas, it is contention of the defendants that Survey No. 38, 43, 82 and 111 are self acquired properties of defendant No.1. Therefore, the plaintiff has no right in those properties.

12. While considering both these contentions and documents filed on record, it is seen that the plaintiff has not filed any document on record which could show that suit properties as mentioned in the plaint are either ancestral properties or properties purchased out of joint family nucleus/ income. The plaintiff has relied upon one of the revenue record i.e. extract 8-A, so as to prove that suit properties are ancestral properties. Upon perusal of extract 8-A filed below Exh.26, it is seen that it is in the name of defendant No.1 and properties bearing Survey No. 38, 43, 82 and 111 are owned by the defendant No.1. This extract does not show that all these properties are inherited from Sadashiv i.e. grandfather of plaintiff. Until and unless, plaintiff file extract 8-A of Sadashiv, it cannot be determined that the suit properties are ancestral properties of plaintiff and defendants at this stage.

13. The plaintiff has also relied upon the another record i.e. Adhikar Abhilekh Panji in respect of Survey No. 16 and 23. However, it is required to note here that until and unless there is record of old Survey number and new Survey number, this document cannot be referred to the present Survey number. In absence of proper revenue documents, i.e. old revenue document standing in the name of Sadashiv- grandfather of plaintiff and document relating change of

survey number, it cannot be determined, at this stage, that suit properties are ancestral properties of plaintiff and defendants.

14. All the documents being filed on record are either in the name of defendant No.1 or other defendants. All these documents directly support the case of defendants, in respect of self acquired properties of defendant No.1.

15. Thus, in absence of proper revenue documents, it cannot be considered that the suit properties are ancestral properties and plaintiff has a share in the suit properties. Therefore, I am inclined to hold that the contentions being raised by the plaintiff are purely questions of trial and same cannot be considered without evidence at this stage.

16. Even if, it is assumed that the suit properties are ancestral properties, defendants cannot be restrained from alienating their undivided share, as it is settled position of law that an undivided share of co-sharer can be subject matter of sale but purchaser has to file suit for partition. I may take recourse to the ratio laid down in the case of **Ramdas vs Sitabai (AIR 2009 S.C. 2735)**. In this case Hon'ble Supreme Court has held that-

'Undivided share of co-sharer may be a subject matter of sale but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by decree of the court.'

17. Ld. advocate of plaintiff has argued that defendants have not filed any document for the support of their case, particularly, their claim regarding suit properties are self acquired properties of defendant No.1, therefore, adverse inference may be drawn against them. While considering this submission, I must mention here that it is settled law

that plaintiff has to prove his case by his own evidence and he cannot derive strength from the weakness of defendant. Thus, it is the plaintiff who is required to prove that suit properties are an ancestral properties. Thus, submission of Ld. advocate of plaintiff cannot be taken into consideration.

18. Apart from this, I must mention here that in both the gift deeds, defendant No.1 claimed that suit properties bearing Survey No. 82 and plot No.21 are exclusively belonged to him. Both these gift deeds are registered documents. Therefore, these documents carry the presumption of truthfulness, until and unless contrary is proved. Thus, the contentions of plaintiff appear to be questions of trial.

19. In view of above discussion, I have come to the conclusion that the plaintiff has no prima facie case and balance of convenience in her favour at this stage. If an interim relief is not granted to the plaintiff, she would not suffer irreparable loss or injury at this stage. So also, the plaintiff has a protection granted under Section 52 of Transfer of Property Act. Therefore, in my opinion, the plaintiff is not required additional protection under Order 39 of Code of Civil Procedure. However, if interim relief is granted to the plaintiff, defendants would suffer irreparable loss and injury at this stage and same cannot be compensated later on. Thus, interest of defendants needs to be protected at this stage. Hence, I answer all the points in favour of defendants.

AS TO POINT NO. 4 :-

20. In view of findings to point No. 1 to 3, the application is deserved to be rejected. Hence, I proceed to pass following order-

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Order below Exh.5

ORDER

1.	Application is rejected.
2.	Cost in cause.

Ramtek.
Dated : 02.04.2024

(S. M. Sarode)
Civil Judge Senior Division,
Ramtek.

CERTIFICATE

I affirm that, the contents of this P.D.F. file of order are word to word, as per original order.

Name of Stenographer : Sau. V. S. Boharapi, Stenographer (Grade II)