

Regular Civil Suit No.37/2017
(CNR No.MHNG14-000488-2017)
Manjulabai/Ganpat & others

ORDER BELOW EXH.5

(Passed on 7th of September, 2018)

1. In order to restrain the defendants from creating any third party interest in the C.T.S. No.1023, Nagar Panchayat Property No.78, admeasuring 158.3 sq.mts. situated at mouza Parseoni, Tahsil- Parseoni, District-Nagpur (hereinafter referred as "suit property") during the pendency of this suit, the plaintiff has filed this interlocutory application under Order XXXIX Rules 1 & 2, r/w section 151 of the C.P.C.

2. The facts giving rise to the filing of this application, in short, are as under:-

The defendant no.1 is the real brother of plaintiff Manjulabai and defendant no.2 is the wife of her deceased real brother namely Vasanta. Defendant nos.3 to 7 are the children of deceased Vasanta and defendant no.2. The father of plaintiff and defendant no.1 namely Janbaji Ramteke was owner of the suit property which was constructed by him during his lifetime. Janbaji was residing in the suit property alongwith his family comprising of his wife, daughter i.e. plaintiff and sons i.e. defendant no.1 and deceased Vasanta. The plaintiff was taking care of her father and mother including the defendants, due to which Janbaji Ramteke has given portion of 896 sq.ft. out of the suit property to plaintiff and since then she was in its possession till 2016. So also, the name of plaintiff is also recorded in the Grampanchayat record as owner and

possessor of portion of 896 sq.fts. of the suit property and property no.79 also came to be allotted to it.

3. Defendant no.1 Ganpat Ramteke started residing at Akashwani Khairi after his marriage, therefore only the plaintiff and her brother Vasanta Ramteke with his family were residing at the suit property. In 2016 the family members of defendant no.1 Ganpat and Vasanta came to her and told that the suit property has become dilapidated and asked her to permit them to dismantle and reconstruct it, upon which the plaintiff told them she will discuss about it with her daughter. However, thereafter the plaintiff came to know that the defendant no.1 intends to sale the suit property to defendant no.8 Nana Bawane, upon which she enquired with him, but he did not give any satisfactory answer. Thereafter, the plaintiff for the house of her daughter at Panjab and when she returned from there, she find that the defendant no.1 with the help of defendant no.8 had dismantle front portion of the suit property. Therefore, she reported the incident to Police Station, Parseoni, but it did not take any action. Thereafter she served the defendants with legal notice dated 11.02.2016 thereby asking them to stop their illegal activities, but they did not pay any heed to it. At last, she has been constrained to file this suit.

4. During the pendency of previous suit, the defendant no.1 Ganpat Ramteke has sold front portion of the suit property to the extent of 851.65 sq.fts. to defendant no.8 Nana vide registered sale deed dated 17.05.2016, which is illegal, null and void and the same is

not binding upon the plaintiff, as she has right, title and interest in the suit property.

5. The defendant no.1 filed his written statement at Exh.37. He has admitted the relationship of plaintiff with defendant nos.1 to 7, but he has denied that the suit property was originally owned by his father Janbaji and that Janbaji gave portion of 896 sq.fts. of the suit property to plaintiff. He has specifically submitted that Janbaji died on 11.12.1953 i.e. prior to coming into force of the Hindu Succession Act, 1956, hence the plaintiff has no right in the suit property. He has further specifically submitted that since beginning the plaintiff is and was not residing at the suit property and residing somewhere else. He has admitted the sale deed dated 18.05.2016 executed by him in favour of defendant no.8. All other adverse allegations are flatly denied by him.

6. Though the defendant nos.2, 3, 4 and 6 were served with suit summons, they failed to appear before the Court. Therefore, the suit proceeded ex parte against them. The defendant no.5 filed her written statement vide Exh.43 and thereby admitted the entire suit filed by the plaintiff.

7. The defendant no.8 filed his written statement at Exh.27. He has denied the relationship between plaintiff and defendants and also denied that the suit property was originally owned by Janbaji Ramteke and that Janbaji gave portion of 896 sq.fts. of the suit property to plaintiff. He too specifically submitted that Janbaji died on

11.12.1953 i.e. prior to coming into force of the Hindu Succession Act, 1956, hence the plaintiff has no right in the suit property. He has further specifically submitted that he is bonafide purchaser of the portion of suit property, purchased by him vide sale deed dated 18.05.2016. All other adverse allegations are denied by him in toto.

8. In the backdrop of the rival pleadings and the documents placed on record, I heard the learned advocates for both the sides.

9. Having perused the application and the relevant documents placed on record, following points arise for my determination and I have recorded my findings against the same for the reasons mentioned as under :-

SN	Points	Findings
1	Does the plaintiff prove that she has prima facie case ?	Yes
2	Does the plaintiff further prove that balance of convenience lies in her favour ?	Yes
3	Does the plaintiff prove that she would suffer irreparable loss if temporary injunction is not granted in her favour ?	Yes
4	What order ?	Application is allowed as per final order.

REASONS

AS TO POINT NOS.1 & 2:

10. All the points being interlinked with each other, I proceed to discuss them together.

It is the case of plaintiff Manjulabai that the suit property was originally owned by her father Janbaji Ramteke, hence she has right, title and interest in it. In order to boost her contentions, she has filed on record the copy of tax assessment list of C.T.S. No.1023 bearing house property no.79 for the year 2016-17, which prima facie goes to show that the plaintiff is in occupation of 896 sq.fts. area of the suit property. So also, she has filed on record the copy of tax receipt dated 12.09.2017. Thus the contentions of plaintiff coupled with the documents filed by her, leads me to prima facie infer that the plaintiff has undivided interest in the suit property.

11. Contrary to this, besides mere contentions that the suit property was not originally owned by his father Janbaji and that Janbaji gave portion of 896 sq.fts. of the suit property to plaintiff, the defendant no.1 has not filed any documents. Moreover, the defendant no.5 by filing her written statement vide Exh.43 has admitted the entire case put forth by the plaintiff Manjulabai. This prima facie leads to draw an adverse inference that the case of plaintiff is true.

In view of the discussion noted above, I find that the plaintiff has prima facie succeeded to establish on record that the suit property is a coparcenary property of plaintiff and defendants, hence she has undivided interest in it. In other words, she has succeeded to prove that she has prima facie case in her favour and that balance of convenience lies in her favour. I, therefore, record my findings as against point nos.1 and 2 in the affirmative.

AS TO POINT NO.3:

12. The plaintiff has succeeded to prove that the suit property is the coparcenary property of plaintiff and defendants, hence she alongwith defendants has interest in it. In such circumstances, if the temporary injunction is not granted in her favour by restraining the defendants from further alienating the portion of suit property, she would suffer irreparable loss which cannot be compensated in terms of money. I, therefore, record my findings as against point no.3 in the affirmative.

13. Shri.Anthony, the learned counsel appearing for the defendant no.8 has placed his reliance in the case of **Kamlesh Kumar Keshari ..vs.. Smt.Maliti Devi and others** reported in **2018(2) Civil L.J. 648** wherein their lordship of the **Hon'ble Chhattisgarh High Court** has discussed that plaintiff has failed to establish three essential ingredients of getting the relief of temporary injunction, hence he is not entitled for the relief of temporary injunction. I have gone through the ratio laid down in the case cited supra, but due respect it has no applicability to the facts of the instant case. Because in the instant case, as discussed in preceding paras, the plaintiff has succeeded to establish the essential ingredients for getting the relief of temporary injunction.

14. As against it, Shri.Paliwal, the learned counsel appearing for the plaintiff has placed his reliance in the case of **Priya Prakash Deshmukh ..vs.. Gajanan Bhagwantrao Deshmukh Decided on 21.07.2015 by the Hon'ble Bombay High Court, Nagpur Bench**

reported in 2016(2) Mh.L.J., wherein it is discussed that since some portion of the suit property is already alienated by defendants, remaining property has to be protected from being alienated during the pendency of suit. I have gone through the ratio laid down in the case cited supra and it has applicability to the instant case also, facts being identical. In the instant case also the suit property has prima facie proved to be a coparcenary property, so also the execution of sale deed of the portion of suit property by defendant no.1 in favour of defendant no.8 is an admitted position of record. In such circumstances, the rest of the property needs to be protected by way of temporary injunction.

In view of the discussions noted above, I am of the view that the plaintiff succeeded to establish triple test for getting the interim relief of temporary injunction. In such circumstances, I am of the considered view that the interlocutory application filed by the plaintiff deserves to be allowed. Hence, I proceed to pass the following order-

ORDER

1. The application Exh.5 is hereby allowed.
2. The defendants are hereby restrained from alienating the suit property i.e. C.T.S. No.1023, Nagar Panchayat Property No.78, admeasuring 158.3 sq.mts. situated at mouza Parseoni, Tahsil- Parseoni, District-Nagpur or from creating any third party interest in it, till the disposal of the suit.
3. Costs in cause.

Parseoni.
Date:-07.09.2018.

(Sanjay D.Wankhede)
Civil Judge, Jr.Dn., Parseoni,

Argument heard on	01.09.2018
Order passed on	07.09.2018
Transcription ready on	07.09.2018
Order checked and singed on	07.09.2018

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-Abhijit Yeshwant Kulkarni