

IN THE COURT OF CIVIL JUDGE (JR. DN.), BHIWAPUR
R.C.S.No. 36/2018
Smt. Prabhawati
-Vs-
Netai and 1

ORDER (Below Exh.5)
(Passed on 4th July, 2019)

This is an application filed by the plaintiff for grant of temporary injunction Under Order XXIX, Rule 1 and 2 read with section 151 of Code of Civil Procedure against the defendants.

2. Plaintiff's case in a nut shell is as under:

The plaintiff has filed the suit for permanent injunction, declaration and restraining the defendant from interfering and disturbing peaceful possession of plaintiff's agricultural land admeasuring 1.11 H.R. bearing Survey No.570/1 of mouza Bhiwapur and 0.24 H.R. bearing survey No. 47/1A of mouza Neri, Tah. Bhiwapur and restraining them from old houses no.145 and 189 under activation of Gosekhurd Dam, mouza Nagtaroli and restraining them from selling new plots in newly resettled village of mouza Nagtaroli. (Hereinafter all these properties be called as 'Suit properties' for the sake of brevity.)

3. Defendant no.1 is a mother and defendant no.2 is a sister of plaintiff. Plaintiff's father namely Parasram Godharu Choudhari was purchased agricultural land by way of registered sale deed dtd. 23.03.1965 as Annexure-4 of the plaint. Her father expired on dtd. 16.09.2007. Plaintiff further submitted that, in the year 2013 defendant no.1 have given above mentioned land of mouza Bhiwapur and Neri equally to plaintiff and defendant no.2, because both are serving daughters and one Vatani Patra was prepared on 23.10.2013 which is at Annexure-14. Thereafter, to give effect to the said partition deed, defendant no.1 applied to the Tahsildar, Bhiwapur for passing necessary order. After passing of partition order, Tah. Bhiwapur on 31.10.2013 in revenue case No.75/SRVD-43/13-14, then defendant no.1 took the plaintiff and defendant no.2 towards agricultural fields and explained them on meets and bounds of land by dividing dhura as mentioned in the affidavit and handed over oral and physical possession. After receiving physical possession, plaintiff is regularly cultivating them every year.

4. Afterwards, after period of one year defendant no.1 preferred an appeal before the Sub-divisional officer, Umrer. Accordingly Tahsildar's order dtd. 31.10.2013 had been quashed and set aside. But now plaintiff has been challenged this order before the Additional Collector, Nagpur and said appeal is pending. But now, defendants are disturb the peaceful possession of agricultural land of

mouza Bhiwapur and Neri and wants to sell it and create third party interest. Therefore, the plaintiff prayed for the relief by way of application and suit.

5. In response to the suit summons, defendants appeared and filed their composite reply to the suit and application of temporary injunction below Exh.19, and denied all the contentions of the plaintiff, and specifically pleaded that survey no.587 is self acquired property of father of plaintiff and defendant no.2. They further contended that, plaintiff and her husband Mr. Madhukar Barekar came under the influence of liquor and threatened to defendant no.1 for the compensation amount of five acres land of Neri which is acquired for the Gosekhurd project. Kusum Wagh who is daughter of defendant no.1, but she expired on 20.11.2018 intestate without living any issue, and her property i.e. 0.45 H.R. of survey no.587 mouza Bhiwapur inherited to the legal heirs of her paternal side. Plaintiff had bad eye on separate property of her mother. Therefore, by playing fraud, cheated her and prepared alleged partition deed which is bogus and forge one. Moreover, the appeal which is filed before the Hon'ble Collector, also dismissed on 19.08.2018. Therefore, plaintiff have no any right. Hence, they prayed for reject the application.

6. Heard Ld. Advocate Shri Patil for the plaintiff and Adv. Shri Jumade for the defendant at length. Following points

arise for my determination and I have recorded my findings thereon with reasons as under:

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the plaintiff has made out prima facie case ?	... Partly Affirmative
2. Whether balance of convenience lies in favour of plaintiff?	... Partly Affirmative
3. Whether any irreparable loss would cause to the plaintiff, if injunction as prayed is not granted ?	... Partly Affirmative
4. What order ?	... As per final order.

REASONS

AS TO POINT NO. 1 TO 3 :

7. All these points are interlinked with each other, therefore, they are taken up together for decision and discussion.

8. Perused whole record and application. It is well settled that for grant of temporary injunction, three factors have to be satisfied which are prima facie case, balance of convenience and irreparable loss.

(i) **Prima facie case:**

Prima facie case does not mean that, the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima facie case means that, the

contentions which the plaintiff is raising, require consideration in merit and or not liable to be rejected summarily.

(ii) **Balance of convenience** :

It is necessary to compare case of parties, comparative mischief or inconvenience which is likely to sue from with holding the injunction will be greater than which is likely to arrive from granting it.

(iii) **Irreparable loss** :

The applicant must further satisfy the court about the second condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted, and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

9. Plaintiff and defendant no.2 are sisters and defendant no.1 is their mother. Plaintiff's father is expired. The agricultural land of mouza Bhiwapur and Neri are ancestral properties. The land consists of survey no.587 of Bhiwapur was purchased by the plaintiff's father on dtd.24.03.1965 by way of Sale Deed. Plaintiff's father Parasram gave this land to his wife i.e. defendant no.1 and he had retained 2.96 H.R. land of mouza Neri R.C.No.77. As per the contention of the plaintiff, defendant no.1 have prepared one partition deed and have given equal shares to her both

daughters. Thereafter, mutation entries taken by the order of Tahsildar, Bhiwapur. But said order of Tahsildar, Bhiwapur is set aside by S.D.O. Umrer. Afterwards, one appeal is filed by the plaintiff before Collector, Nagpur. But said appeal is also dismissed. Now while deciding the Exh.5, it is basic principle of equity that who wants equity, must do equity and should be come with clean hands before the Court.

10. Prmia facie, it is seen that, the suit properties are ancestral properties and plaintiff and defendants have involved in the share and they are supposed to co-owners also and any one member of the family cannot have full right for cultivation and in possession, because in the eyes of law all the members of the family and all the co-owners are in possession. Therefore, the plaintiffs contention regarding the suit property is that not to disturb her peaceful possession, is not looking bonafide. The 7/12 extract filed on record which are in the year of 2015-16. At this stage, it admitted fact that the ferfar and revenue entries are challenged. Therefore, prima facie, I hold tha plaintiff is not in possession of the suit property and agricultural land of Bhiwapur and Neri. The dispute regarding the Fer Far and ownership, whether the suit properties are ancestral or separate property which needs evidence and full fledge trial. Therefore, it will be decide on the merits. There is no specific document or any oral evidence/affidavit, which reflects that, plaintiff is in possession of suit property i.e. agricultural land of mouza Bhiwapur and Neri today. Defendant no.2 is mother of the

plaintiff and he had every right in respect of house and agricultural land. But if agricultural land would be sold, then definitely cause or harm to the plaintiff.

11. Considering all the facts and circumstances, it is seen that partly prima facie case is in favour of the plaintiff. There is irreparable loss may be caused if temporary injunction is not granted to the plaintiffs. Therefore, I answered Issue no.1 to 3 in partly affirmative, and I proceed to pass the following order.

ORDER

1. Application Exh.5 is partly allowed.
2. The defendant, his agent, servants or any other person/relatives on his behalf is hereby restrained to sell the agricultural land bearing survey no.587/1 , Area 1.18 H. mouza Bhiwapur and Survey No.47/1, Area 0.24 H. mouza Neri to any third person and not to create third party interest till the final disposal of the suit.
3. Rest of the plaintiff's prayer is denied.
4. Cost in cause.

Bhiwapur.
Date :04/07/2019

Sd/-
(Vinod S. Damare)
Civil Judge (Jr.Dn.)
Bhiwapur

CERTIFICATE

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

Name of Stenographer : **Ravindra W. Vindane,**
to C.J.J.D. & J.M.F.C., Bhiwapur

DISTRICT COURT
NAGPUR