

OPERATIVE ORDER BELOW EXH. 5 IN REG. CIVIL SUIT NO. 262/2012

The plaintiffs are seeking temporary injunction restraining the defendants from alienating and making construction over the suit properties.

The averments of the plaintiffs :-

2. The plaintiff and defendants No. 1 to 4 are relatives. Their relations are described in pe-degree referred in the order of Superintendent of Land Records at Exh. 3/14, where from it reveals that the plaintiffs are heirs of Vasant Dhondopant Kawale, defendant No. 1 is son of Dattatray Dhondopant Kawale, defendants No. 2 to 4 are heirs of Prabhakar Ramchandra Kawale. Thus, ancestors of the plaintiffs and defendant No. 1 are real brothers and Prabhakar Ramchandra Kawale is their cousin brother. It is averred that there was dispute amongst the ancestors of the plaintiffs and defendants No. 1 to 4 about their ancestral properties. The dispute was adjudicated before the Superintendent of Land Records, Nashik in Appeal Nos, S-118 and 119 wherein City Survey No. 1792 to 1795 and 1797 were declared as owned by father of the plaintiffs whereas it was declared that the plaintiffs were having 1/8th share in City Survey Nos. 1796, 1798, 1799 and 1800 to 1803 (hereinafter referred as the 'suit properties').

3. Ancestor/father of defendant No. 1 played fraud on father of the plaintiffs and prepared false and bogus partition deed. On the basis of said partition deed defendant Nos. 1 to 4 made agreement with defendant No. 5 for development of the suit properties. This has constrained the plaintiffs to sue the defendants with a prayer of temporary injunction restraining them from alienating and making construction over the suit properties.

The contentions of the defendants :

4. The defendants have resisted the claim. It is contended that the partition deed was registered on 27th June, 2001. The suit properties were

divided amongst Vasant Dhondu Kawale, Prabhakar Ramchandra Kawale and Dattatray Dhondopant Kawale. Accordingly, the plaintiffs and defendant Nos. 1 to 4 are in possession over their respective shares. Thus, the act of defendants No. 1 to 4 to make development agreement with defendant No. 5 is illegal. With this, the defendants have prayed to reject the application.

5. The points for determination along with my findings thereon are as under :-

<u>POINTS</u>	<u>FINDINGS</u>
1). Whether the plaintiffs prove that prima-facie case is in their favour ?	... In the Affirmative.
2). Whether the plaintiffs prove that balance of convenience lies with them ?	... In the Affirmative.
3). Whether the plaintiffs prove that they would suffer irreparable loss if the injunction is refused ?	... In the Affirmative.
4). What order ?	... Application is allowed.

REASONS

6. Heard both the learned advocates. Considered submissions.

AS TO POINT NO. 1

7. It is admitted position that the suit properties were originally belonging to ancestors of the plaintiffs and defendants No. 1 to 4. Although defendants No. 1 to 4 have placed reliance upon partition deed (Exh. 24/1) it is pertinent to note that said partition deed prima-facie shows partition amongst

Dattatray (farther of defendant No.1), Vasant (father of the plaintiffs), Prabhakar (ancestor of defendants No. 2 to 4). That means, said partition deed (Exh.24/1) does not show presence, participation and benefit in respect of Digambar (brother of Dattatray and Vasant) and Devidas, Padmkar and Divakar (brothers of Prabhakar). If it is so, the validity and issue in respect of limitation regarding knowledge of partition deed (Exh. 24/1) is a question which is to be adjudicated at the time of trial. Certainly, till then the plaintiffs are having prima-facie rights and interests in the suit properties.

8. Learned advocate Shri. R.T. Chavan has submitted that City Survey Officer informed the plaintiffs to approach Civil Court on 27.06.2003 about entries on the basis of partition deed. He has further submitted that the suit claim is not bonafide and barred by law of limitation. He has further submitted that the partition deed is a registered document which is not challenged till date. Therefore, the plaintiffs do not have prima-facie case in their favour. The arguments advanced on behalf of the defendants are not acceptable in view of the reasoning recorded herein-in-above. If defendants No. 1 to 4 are allowed to alienate and construct on the suit properties as per their wish, it would effect the entire suit properties. As such, the suit properties are termed to be house properties and a temple. Ultimately, it would change nature of the suit property which could not be reinstated as original. Therefore, the basic nature of the suit properties is required to be protected till adjudication of the rights and interests of the parties involved in the suit proceedings. Hence, Point No. 1 is answered in the affirmative.

AS TO POINT NOS. 2 AND 3 :-

9. In view of affirmative finding to Point No. 1, the balance of convenience lies in favour of the plaintiffs. If application is rejected, the basic nature, status of the suit properties would be in danger and it would be changed. As against this, if injunction is allowed no greater hardship will be caused to the

defendants. At the most, the points in controversy and the rights of the parties would be decided on merits. Hence, the plaintiffs would suffer greater hardship than the defendants if injunction is refused. Hence, Point Nos. 2 and 3 are answered in the affirmative.

AS TO POINT NO. 4 :-

10. In view of reasoning stated so far, in answer to Point No. 4 I pass the following order :-

ORDER

- (1) The application is allowed on following terms :
- (2) The defendants are restrained from alienating the suit properties in any way until further orders.
- (3) The defendants are restrained from continuing the construction on the suit properties, in any way, until further orders.
- (4) Costs in cause

Pimpaolgaon (B)
Date : 30.07.2013.

(V.B. Gulve Patil),
Jt. Civil Judge, Junior Division,
Pimpalgaon (B)