

MHNS140006842021



R.C.S. No. 148/2021
Vilas Deshmukh & Ors. Vs. Uma
Deshmukh & Ors.

ORDER BELOW EXH. 22

The present application is filed by plaintiffs against defendants no. 6 to 8 vide order 39 Rule 1 of the Code of Civil Procedure in order to restrain defendants no. 6 to 8 from obstructing peaceful possession of plaintiffs over the suit property ad-measuring 3.51 R and Potkharaba 3 R out of gt no. 336 (more particularly described in plaint para no. 1), and to restrain defendants no. 6 to 8 from alienating the suit property which they have purchased through sale deed bearing no. 4573/2023 till disposal of the present suit.

2. Plaintiffs have claimed cost of the present application from defendants no. 1 to 4 and 6 to 8. The defendants no. 6 to 8 appeared and filed their say at Exh. 36. Defendants no. 1 to 4 filed their say at Exh. 48. The suit is filed for declaration, partition and injunction.

3. Heard Learned advocates for all the parties. Considering the submissions, following points arise for my determination the findings and reasons of which are as follows.

Sr. No.	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiffs have established Prima Facie Case in their favour?	Yes.
2.	Whether the balance of convenience lies in the favour of the plaintiffs?	Yes.
3.	Whether irreparable loss will be caused to the plaintiffs if temporary injunction is not granted in their favour?	Yes.
4.	What order?	Party allowed as per final order.

REASONS

AS TO POINTS NO.1 TO 4.

4. In support of their case, the plaintiffs has filed 7/12 extract of Gat no. 336 dt. 03.09.2021, Village map showing Gat no. 336, Mutation Entry no. 690, Mutation entry no. 795, the certified copy of partition deed dt. 07/07/2020, Mutation entry no. 819, the application filed by plaintiffs to Talathi, Kokangaon Budruk dt. 18/06/2021, Copy of sale deed bearing no. 4573/2023, dt. 20/10/2023, Mutation entry no. 975 in furtherance of the sale deed, Photographs, Affidavits of Deelip Trambakrao Deshmukh and Himmat Kisanrao Deshmukh dt. 04/07/2024. Defendants have not produced any document in support of their contentions.

5. Ld. Advocate for the plaintiffs submitted that the father of defendants no. 2 to 4 and Husband of defendant no. 1 namely Sanjay Deshmukh who was brother of plaintiffs told plaintiffs that in order to obtain some Government scheme benefit, the annewari of plaintiffs and Sanjay Deshmukh is required i.e equal annewari. Plaintiffs due on faith on Sanjay signed on the document brought by Sanjay which was registered before the sub registrar on 07/07/2020. The mutation entry no. 799 is done in furtherance of the same. Deceased Sanjay did not put equal share in the said partition document dt. 07/07/2020. He put 57.5 R land each for plaintiffs and 2.40 H. R. land for himself in the said document. Thereafter, on 14/10/2020 Sanjay died and defendants no. 1 to 4 were brought as his legal heirs on record by mutation entry no. 819. Although the partition dt. 07/07/2020 by partition deed bearing no. 1277/2020 was executed, there was no actual partition done and there are no separate boundaries of lands of plaintiffs and the land of deceased Sanjay till today. The whole suit property is still in possession of plaintiffs. The plaintiffs are cultivating suit property.

6. He further submitted that, when plaintiffs came to know about the said fact of the amount of land in record of rights in front of their names, they filed the present suit when the legal heirs of deceased Sanjay refused for equal share of plaintiffs and deceased Sanjay. He further submitted that, during pendency of the present suit, defendants no. 1 to 4 sold the portion of land bearing in their name i.e 2 H. to the defendants no. 6 to 8 vide registered sale deed bearing no 4573/2023 on 20/10/2023. Defendants no. 1 to 4 were aware of the present suit when they executed sale deed in favour of defendants no.

6 to 8. In spite of this fact that, they mentioned in the sale deed that there is no suit pending for the suit property. There is no document on record which shows that defendants no. 6 to 8 are bonafide purchasers. On the other hand, plaintiffs have brought photographs and the affidavits of Dilip Deshmukh and Himmat Deshmukh which show that plaintiffs are still in possession of the suit property. Plaintiffs are still ready to agree the transfer of sale between defendants no. 1 to 4 and 6 to 8 if defendants no. 1 to 4 sell 1/3rd share of deceased Sanjay out of the suit property. However, defendants no. 1 to 4 sold 2 H. to defendants, which includes the land of plaintiffs also. Now, defendants no. 6 to 8 are trying to forcefully obtain possession of the land as per the sale deed and they are threatening plaintiffs for the same. Further, if defendants no. 6 to 8 alienate the part of suit property, it will cause irreparable loss to plaintiffs. Hence, plaintiffs have prima facie case in their favour, the balance of convenience lies in favour of plaintiffs and irreparable loss will be caused to plaintiffs if the application is not allowed. Hence, the application be allowed.

7. Ld. Advocate for the defendants no. 1 to 4 submitted that, the partition deed bearing no. 1277/2020 was executed properly. Defendants no. 6 to 8 are bonafied purchasers of the land. It was Bhogvatdar class 2 land which was converted into class 1 land after due permission of the collector. Deceased Sanjay had published notice for title verification. The plaintiffs have not challenged the partition deed bearing no. 1277/2020 and mutation entry no. 799. The boundaries of the land were fixed on the date of sale deed itself. Defendants no. 6 to 8 have created fencing and they are in peaceful possession of their land. Hence, the application be rejected.

8. Ld. Advocate for the defendants no. 6 to 8 submitted that, defendants no. 1 to 4 were in need of money due to which they wanted to sale the portion of suit which was in their name. The land was class 2 land. It was converted into class 1 land after due permission of collector by paying the appropriate fees to the government. Deceased Sanjay had published notice for title verification. Plaintiffs have not challenged partition deed no. 1277/2020 and mutation entry no. 799 in the Civil Court or in the Revenue Court till today. Plaintiffs are trying to take advantage of the fact that the defendant no. 1 is widow and defendants no. 2 to 4 are her children. Defendants no. 6 to 8 have taken due care before purchasing the land from defendants no. 1 to 4. If the application is allowed defendants no. 6 to 8 will have to bear irreparable loss. They have purchased the land by executing sale deed and after payment of consideration of the sale deed. Hence, the application be rejected.

9. Perused record. The partition deed bearing no. 1277 is registered partition deed between plaintiffs and deceased Sanjay being legal heirs of deceased Nana Saheb as Laxmibai Nanasaheb Deshmukh had died and Rukmini Nanasaheb Deshmukh has relinquished her rights which are admitted facts. However, plaintiffs have challenged the share shown in the partition deed as only 57.50 R land each is shown to their share and 2 H. 40 R land is shown to the share of deceased Sanjay. Plaintiffs have challenged the partition deed by filing the present suit on 06/10/2021. They have also challenged the subsequent mutation entry no. 799 done as per the partition deed. The cause of action is shown as defendants no. 1 to 4 denied for equal share that is for 1/3rd share each of plaintiffs and deceased Sanjay.

Plaintiffs have contended in the plaint that when plaintiffs obtained the documents of taking legal heirs of deceased Sanjay on record, they came to know that deceased Sanjay had taken more share than 1/3rd as per the partition deed. The plaintiffs have challenged the partition deed in the present suit within limitation. Plaintiffs have produced the copy of application dt. 18/06/2021. They have filed the said application towards the Talathi for not doing any further mutation entry in respect of the suit property as they wanted equal partition in the suit property and less is shown for their names in record of rights. In the said application, it is mentioned that defendants no. 1 to 4 are about to sell 2 H. 40 R land. Plaintiffs have taken steps for taking objection for further mutation entries for the suit property to Talathi and filed the suit on 06/10/2021. This prima facie shows that plaintiffs have claimed the available remedy within limitation.

10. The record shows that the suit summons were served on defendants no. 1 to 4 on 03/01/2022 vide summons report at Exh. 8. The ex parte order was passed against defendants no. 1 to 4 on 01/8/2023. This prima facie shows that defendants no. 1 to 4 were well aware of the pendency of the present when they executed sale deed bearing no. 4573/23 dt. 20.10.2023 in favour of defendants no. 6 to 8. Still they mentioned in the sale deed that no suit is pending for the land which they had sold through the sale deed.

11. Defendants have not brought any document on their behalf. Defendants no. 1 to 4 and 6 to 8 contended that the notice was published by deceased Sanjay for title verification. However, it is not

brought on record. Further, defendants no. 6 to 8 have not brought on record the published notice before purchasing the land from defendants no. 1 to 4. Hence, prima facie it cannot be said that defendants no. 6 to 8 are bonafide purchasers. It is clear that defendants no. 1 to 4 have sold the land to defendants no 6 to 8 during the pendency of the present suit. In such circumstances, if defendants no. 6 to 8 again alienate 2 H. land out of the suit property by taking advantage of the sale deed no. 4573/2023 and mutation entry no. 975 in their favour, it may cause hardship to plaintiffs and multiplicity of proceedings in future.

12. Plaintiffs contended that, although the partition deed was executed, there was no actual partition in the land and the four boundaries of the respective shares were not fixed. Plaintiffs are still in possession of the whole suit property. Plaintiffs have brought on record the affidavits of Dilip Deshmukh and Himamt Deshmukh to show that plaintiffs are cultivating the suit property. However, on the 7/12 extract of Gat no. 336, the shares of plaintiffs and defendants no. 1 to 4 are shown separately. Plaintiffs have not prima facie brought on record that they are cultivating the whole suit property. On the other hand, defendants have purchased 2 H land out of the suit property from defendants no. 1 to 4 on 20/10/2023 during pendency of the suit. Although, the mutation entry no. 975 is done in their favour, the plaintiffs had filed an application on 18/06/2021 to Talathi. Defendants no. 6 to 8 have not brought anything on record to show that they are in actual possession of the land and they are cultivating the land. Defendants no. 6 to 8 are having at least some share in the suit property. In view of section 44 of the Transfer of Property Act,

defendants no. 6 to 8 are co-owners of the suit property. They are bonafide purchasers or not is to be decided after evidence. However, no exclusive possession of the suit property is prima facie shown by plaintiffs. Hence, defendants no. 6 to 8 cannot be restrained from disturbing the possession of plaintiffs on the entire suit property. However, plaintiffs have challenged partition deed and mutation entry no. 799 within limitation. Plaintiffs have prima facie case in their favour. Plaintiffs have balance of convenience in their favour. If defendants no. 6 to 8 are not restrained from alienating the land in their name, it may cause multiplicity of proceeding in future and irreparable loss to plaintiffs. Hence, I answer points no. 1 to 3 in affirmative and in answer to point no. 4, the following order.

ORDER

1. The application is partly allowed.
2. Defendants no. 6 to 8 are hereby restrained from alienating or transferring the part of suit property which is in their name as per the sale deed bearing no. 4573/23 and mutation entry no. 975 till final disposal of the suit.
3. Parties to bear their own costs.

Date: 19/11/2024
Place: Dindori

(S. C. Nirmale)
Jt. Civil Judge Junior Division,
Dindori