

Bajirao Bala Shinde ... Plaintiff.

V/S.

Ramdas Bala Shinde & Ors. ... Defendants.

Order below Exh.- 5 in R.C.S. No.- 117/2014

1] This is an application filed by plaintiff under Order XXXIX, Rule 1 and 2 of Civil Procedure Code for grant of temporary injunction to restrain the defendants from obstructing his possession and enjoyment over the suit property.

2] The suit property is consisting of Gut No. - 197 admeasuring 1H 17R having boundaries towards East – Gut No. - 198 and stream-let, towards West – Gut No. - 196, towards South – Hirapur road, towards North – stream let and Gut No. - 192 situated at Devargaon, Tal.- Chandwad, Dist.-Nashik. (here-in-after referred as suit property for sake of convenience).

3] It is the case of the plaintiff that the defendant nos. 1 and 2 are his brothers and the defendant nos. 3 and 4 are the sons of defendant no. 1 and defendant no. 5 is his wife. The partition of ancestral property of plaintiff and defendants have taken place orally, however its mutation entries are not recorded in the revenue record. The plaintiff has purchased the suit property on 07/05/1979 for the consideration of Rs. 15,000/- out of his own source of income. The mutation entry of said sale-deed is taken in the revenue record of the suit property vide mutation entry no. - 341. The plaintiff was enjoying the possession of the suit property and cultivating the same after its purchase. As the defendant nos. 1 and 2 were not having their own house, therefore the plaintiff has permitted them to use his house situated in the suit property. He has requested the defendant nos. 1 and 2 to deliver the vacant possession of his house and reside

in the area which is allotted to them in the partition, however the defendant nos. 1 and 2 avoided the same and started obstructing the peaceful enjoyment of the suit property by the plaintiff. A criminal case was also filed against them for the said reason. Due to these reasons the defendants started obstructing the possession of the plaintiff over the suit property and therefore, the plaintiff has prayed for temporary injunction in the above terms till decision of the suit.

4] The defendant nos. 1, 3 to 5 vide their say at Exh. - 16 denied and disputed the claim of the plaintiff. They have submitted that the plaintiff and defendant nos. 1 and 2 alongwith Shivaji Bala Shinde were the members of Hindu Joint Family of their father Bala Balwant Shinde. During his lifetime, the plaintiff and all the defendants were cultivating their ancestral property with Bala Shinde. Shivaji was working as a teacher at Pimpalgaon Baswant and the defendant no. 1 was working as a clerk at Lasalgaon Market Committee. As a result, the plaintiff, defendant nos. 1 and 2 and their father Bala Shinde were jointly cultivating the ancestral properties for their joint family. During the subsistence of their joint family, the property bearing Gut No. 307 was purchased in the name of Bala Shinde from the income of Shivaji and defendant no. 1. Similarly, on 07/05/1979 the suit property was purchased by them in the name of plaintiff by way of registered sale-deed. The consideration of said transaction was paid from the income of their ancestral properties and the income of the defendant no. 1 and Shivaji. Thereafter, on 31/07/2001, all the ancestral properties of the joint family of Bala Shinde including the suit property were partitioned between all the brothers and the suit property was divided by east-west boundary. The northern area of 58R was allotted to defendant no. 1 with the southern portion of Gut No.

191 admeasuring 30R and 0.8R from Gut No. - 307. The house situated in the suit property was also allotted to the share of defendant no. 1. The remaining area of 59R of Gut No. 197 from southern portion was allotted to defendant no. 2. The area of 94R from eastern side in Gut No. - 191 and 0.6R from Gut No. - 307 was allotted to the share of plaintiff. It is their contention that, the plaintiff is in possession of this share which is allotted to him. The defendants submitted that as per this partition, all the sons of deceased Bala Shinde are in possession of their respective shares and it was agreed between them that the mutation entries of said partition was to be effected in due course of time. However, the plaintiff started avoiding the effecting of mutation entires as per the said partition and started obstructing their possession over the suit property. The defendant no. 1 has erected a grape yard in the suit property so also he has also constructed a field pond in the suit property due to which he made progress and development in the suit property which fact was disliked by the plaintiff and therefore he has filed the false suit and preferred this frivolous application. Therefore, they prayed for dismissal of the application.

5] Considering the rival pleadings of both the parties and documents produced in support of it, following points arise for my determination to which, I record my findings thereon for reasons to follow:

<u>Points.</u>		<u>Findings.</u>
01]	Whether plaintiff is having prima facie case? In negative.
02]	Whether the balance of convenience lies in favour of plaintiff ? In negative.
03]	Whether plaintiff would suffer irreparable loss, if injunction is refused ? In negative.

04]	What order ?	...As per final order.
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: REASONS :

6] Heard learned counsel for plaintiff Shri. S.R. Wankhede and learned counsel for defendants Shri. S.D. Jadhav.

7] The plaintiff has produced the copy of registered sale-deed dated 07/05/1979 alongwith the copies of 7/12 extracts of the suit property.

8] To counter the case the defendants have produced an unregistered deed of partition dated 31/07/2001 alongwith 7/12 extracts of the ancestral properties of Bala Shinde and the affidavits of Ashok Baburao Shinde and Shivaji Bala Shinde i.e. the brother of plaintiff and defendant nos. 1 and 2.

9] Before proceeding to discuss the merit of the present case, it requires to be noted that, grant of temporary injunction is purely a discretionary relief governed by the provisions of Section 94 and Order XXXIX, Rule 1 and 2 of Civil Procedure Code. The discretion vested in the Court has to be exercised keeping in the mind the well settled principles of justice, equity and good conscience. In order to succeed in the application, it is expected that, plaintiff must approach the Court with the clean hands, as it is said that, a person who seeks equity must do equity. Plaintiff is bound to prove prima facie that, there exists an obligation in their favour and consequently against the defendants which can be enforced by the Court by way of interim relief. Plaintiff is required to establish that he is having some lawful right, title or interest in the suit property. Considering these principles, I proceed to decide the present case.

AS TO POINT NO. 1 :

10] The facts of the present case lie in very narrow compass. The plaintiff has prayed for grant of temporary injunction on the basis of ownership by way of sale-deed dated 07/05/1979. He has submitted that the suit property was purchased by him from his own source of income and since its purchase he has been cultivating the same. It is his case that the partition of the ancestral properties of deceased Bala Shinde i.e. his father had taken place between himself and his brothers i.e. defendant nos. 1 and 2 and Shivaji Bala Shinde. He is entitled for peaceful enjoyment of suit property, it being his self acquired property.

11] On the contrary, it is the contention of the defendants that the suit property was purchased from the income arising out of the joint family property of deceased Bala Shinde when their family was undivided. The suit property was purchased in the name of plaintiff as the defendant nos. 1 and 2 were in service. Since the suit property is purchased out of the income of the joint family of Bala Shinde in the name of plaintiff, it was subjected to the partition which was effected in the year 1991 in presence of witnesses and their father. The plaintiff had received 94R area from Gut No. - 191 and 6R area from Gut No. - 307 to his share in the said partition whereas the defendant nos. 1 and 2 were allotted half portion each in the suit property. They have produced the copy of unregistered partition deed which is effected on 31/07/2001 on a stamp paper.

12] On weighting the rival contention of both the parties, what comes out on record is that though the plaintiff has averred specifically that the oral partition of the ancestral properties of the joint family of his father had taken place between his brothers and

himself, however he has not detailed the same. It is apparent that the sale-deed in question goes to show that the suit property was purchased in the name of plaintiff, however it is not clear as to whether it was purchased when their family was joint or it was his separate property. In such circumstances, the partition deed dated 31/07/2001 goes to show that indeed the suit property was allotted to the share of defendant nos. 1 and 2 in the partition and the plaintiff had received other properties. It must be stated that this partition deed bears signature of plaintiff as well. The plaintiff has not explained as to why he has subjected his self acquired property to the partition amongst his brothers. In fact, his pleading in respect of oral partition is sans details. It was necessary for him to show that he has not accepted the partition and he continuously enjoyed the ownership over the suit property. On the contrary, the defendants have detailed the partition dated 31/07/2001 and in fact produced the affidavits of witness Ashok Shinde and Shivaji Bala Shinde who is a party to the partition. This prima-facie indicates that the plaintiff has acquiesced in the partition which have taken place in the year 2001 by way of which the suit property was subjected to the said partition though it was purchased in the name of plaintiff. This fact necessarily goes to show that at least prima-facie that the suit property was purchased as an incident of the ancestral property of deceased Bala Shinde or from its income for the benefit of joint family though in the name of plaintiff. Hence, plaintiff has failed to prove prima-facie case in his favour. Hence, I answer point No. - 1 in negative.

AS TO POINT NOS.2 AND 3 -

13] As observed earlier, though the plaintiff has averred that the oral partition of the ancestral properties of the deceased Bala

Shinde has taken place between his brothers and himself, however he has not detailed the same. In fact, he has also failed to state before the Court about the share received by him in the said oral partition. A party claiming discretionary relief of injunction is required to bring all the necessary facts before the Court to balance the equities. Here in this case, prima-facie it appears that plaintiff has suppressed material facts from the court and therefore equity cannot favour such a person. The plaintiff proceeded to claim injunction in respect of the suit property, whereas he kept silence in respect of the properties which were allotted to him in the partition. Equity cannot favour a person who comes with half truth or suppress fact. Therefore, the balance of convenience do not lie in favour of plaintiff so also as per the oral partition supported by the affidavits of brother of plaintiff himself i.e. Shivaji Bala Shinde the defendants are appears to be in possession of the suit property, therefore no irreparable injury would be sustained to the plaintiff if injunction is refused. Hence, I answer point nos. 2 and 3 in negative and proceed to pass following order -

ORDER

- 1] The application Exh. 5 stands rejected.
- 2] Cost in cause.

Chandwad
Date: 30th January, 2016

(R. B. Giri)
Civil Judge, Junior Division., Chandwad
Dist-Nashik.