

ORDER BELOW EXH.05**R.C.S. No. 126/2017.**

(Passed on : 12.12.2022)

1. The plaintiff has filed present application restraining the defendants from alienating and creating third party interest in the suit property till the decision of the suit.
2. It is the contention of the plaintiff that 1.20 H.R. out of the land Gat No. 601/1 and the land Gat No.892 ad-measuring 0-88 H.R. both situated at Mukhed, Tal. Yeola, Dist. Nashik and the said properties are described in the plaint as suit property No. 1-A, 12 R. out of Gat No.601/1 and 58 R. out of Gat No.892 is acquired by the Government. The house property No. 552 ad-measuring 59.1 Sq. Ft. situated at village Mukhed, Tal. Yeola, Dist. Nashik is described in the plaint as property No.1-B.
3. Defendant Nos.1 and 2 are the husband wife and the plaintiff and defendant No.3 are their children. The defendant No.4 is the wife of defendant No.3. The land Gat No.892 and the property No.1-B are the ancestral properties of the plaintiff and defendants. 0-20 H.R. out of land Gat No.601/1 was purchased in the name of defendant No.1 from the family income of the plaintiff and the defendants. All the properties are owned and possessed by the plaintiff and the defendants.
4. The plaintiff is handicapped and helping the defendants in the agricultural work as per his capacity. Thereafter, the plaintiff got married with Shantabai and they are having two children. Further, the defendant No.3 also got married and all are residing jointly. The plaintiff is having undivided share in the suit properties and suit properties are yet to be partitioned.
5. The defendants have refused to give proceeds from the suit properties

to the plaintiff and drove him away from the house. Hence, plaintiff is doing labour work for his survival. Some of the portion out of suit property 1-A was acquired by the Government for Palkhed left Canal and being the Karta of the family, the defendant No.1 has filed Land Reference Case No.156/2004 before C.J.S.D., Niphad for compensation. The said suit was decided and Rs.12,08,904/- was sanctioned by the court and the same is deposited in the court.

6. When the plaintiff across with the fact of deposit of amount, he demanded partition of properties to the defendant No.1 but he refused to do so. Thereafter, the plaintiff has filed objection application in L.A.R. No.156/2004 and demanded his share out of the amount deposited. Accordingly, the court has issued notice to the defendant No.1. He appeared before the court and it was agreed between the plaintiff and defendant No.1 that the defendant No.1 will partition the suit properties and the amount deposited in the court. Accordingly, the defendant No.1 has paid the share of the plaintiff in the amount deposited in the court. Whereas, he refused to partition the suit properties.

7. On 30.08.2017, the plaintiff demanded partition and possession of his share. The defendant No.1 refused to do so. Thereafter, on 06.09.2017, the defendant No.1 has illegally sold 30 R. land out of Gat No.892 in favour of defendant No.4. As the suit properties are ancestral, defendant No.1 has no right and title to alienate the suit properties. So also, the defendant No.1 was not in need of money. Despite that, he has executed the sale-deed without the consent of the plaintiff. Further, the defendant No.1 never received consideration amount of the sale-deed as defendant No.4 was having that much financial caliber. The said sale-deed is illegal and hence, not binding on the plaintiff. Now the plaintiff does not want to keep all the suit properties in

common possession with defendants. Hence, he has filed this suit. The plaintiff is having 1/3 rd share in the suit properties. If the suit properties are alienated or third party interest is created, the plaintiff will suffer an irreparable loss. Hence, plaintiff has filed this application.

8. The defendant Nos.1 and 2 have filed their say below Exh.24 and denied the contents of the application. It is their contention that the plaintiff has not come before the court with clean hands. The boundaries of the suit properties are not mentioned in the plaint. The defendant Nos.1 and 2 have denied that the suit properties are ancestral properties. Further, they have denied that the suit properties are not partitioned yet. Further, they have denied that they have drove away the plaintiff from their house. Further, they have denied that the plaintiff demanded partition. Further, the defendant Nos.1 and 2 have denied that on 06.09.2017, they have executed the sale-deed of 30 R. land out of Gat No.892 in favour of defendant No.3 illegally.

9. Earlier, the defendant Nos.1 and 2 are the owners of old Gat No.857 of which new number is Gat No. 892, ad-measuring 44 R. which is their ancestral property. Thereafter, the defendant No.1 had worked as a tenant in the land of Laxman Shripat Aher on the yearly basis and from that income the defendant No.1 is maintaining the plaintiff and defendant Nos.2 and 3. The Laxman Shripat Aher has given 44 R. land in Gat No.892 to the defendant No.1 and thus, the defendant No.1 became the owner of 44 R. + 44 R. in total 88 R. land. But in fact, 44 R. land only was the ancestral land. The remaining 44 R. land was earned by the defendant No.1 as tenant on yearly basis.

10. Thereafter, in consolidation scheme in 1994, Gat No.857 is converted into Gat No.892. Thereafter, the irrigation department has acquired 58 R. land out of Gat No.892 for Nandur Madhyameshwar Kalwa. The Government

(Irrigation Department) has acquired 44 R. ancestral and 14 R. from the remaining 44 R. land. The compensation received was paid by the defendant No.1 to the plaintiff and defendant No.3 and hence, now only 30 R. self acquired land of defendant No.1 was remained in Gat No.892.

11. The defendant No.1 has constructed the four room's house in said 30 R. land and spent Rs.9 to 10 Lakhs for the construction. After giving the share out of the compensation amount of plaintiff and defendant No.2, very little amount left for defendant No.1 and the said amount is not enough for the construction of the house. Hence, the defendant No.1 decided to sell 30 R. land. The defendant Nos.3 and 4 are ready to purchase the said land and hence, the defendant No.4 has purchased 30 R. land from defendant No.1. The plaintiff is not concerned with the said 30 R. land or with the house property because it is the self acquired property of defendant No.1.

12. The defendant No.3 is the elder son of defendant No.1. He is residing separately from defendant No.1 since his marriage. So also, the plaintiff is also residing separately. The defendant No.1 has purchase Gat No.601/1 out of the income of Gat No.892 and hence, Gat No.601/1 is the self acquired property of defendant No.1.

13. The plaintiff never look after defendant Nos.1 and 2. He has failed to perform his duty as a son. The defendant Nos.1 and 2 have made Fixed Deposit of Rs.50,000/- in Maharashtra Bank in the name of the daughter of the plaintiff namely Madhuri to which the name of defendant No.1 is mentioned as nominee. No right of plaintiff is remained in the remaining properties and he is claiming partition illegally. Thus, they have prayed for rejection of the application.

14. The defendant Nos.3 and 4 have filed their say below Exh.26 and

denied the contents of the application. It is their contention that they are doing labour work. The defendant Nos.3 and 4 are the husband and wife. They are having two sons. One is doing service in Mahindra and Mahindra and another is doing service in Mukhed Nagari Patsanstha.

15. Initially, Gat No.892 ad-measuring 44 R. was the ancestral property. Thereafter, total ad-measuring area of Gat No.892 was 88 R. owned by the defendant No.1. The remaining 44 R. land was owned by the brother of defendant No.1 Laxman Shripat Aher. Due to the weak financial condition defendant No.1 is doing his working as a tenant on yearly basis and due to the love and affection, the Laxman Aher has given 44 R. land to defendant No.1. Thus, out of Gat No.892, 44 R. land is ancestral. Whereas, remaining 44 R. land is self acquired property of defendant No.1

16. The irrigation Department has acquired 58 R. land out of Gat No.892. The compensation received from the Government is paid by the defendant No.1 to the plaintiff and defendant No.3 as per their share. Thus, as per their share in ancestral property, they have received the compensation amount and hence, the remaining 30 R. land is self acquired property of defendant No.1 on which defendant No.1 has constructed his house. In order to meet the expenses of construction, the defendant No.1 decided to sell the 30 R. excluding the area of house.

17. Defendant Nos.3 and 4 have shown their readiness and willingness to purchase the said property and hence, the defendant No.1 has executed the sale-deed from defendant No.1 to defendant No.4. The sale-deed is registered sale-deed executed before the Sub-Registrar Office. The defendant Nos.3 and 4 have given the total consideration amount of sale-deed to defendant No.1. The area sold is the self acquired property of defendant No.1. The plaintiff is

not concerned with it.

18. The defendant No.1 has purchased Gat No.601/1 from the proceeds of Gat No.892. Thus, Gat No.601/1 was purchased from the joint family income and hence, the defendant No.3 is having share in property No.552 situated at Mukhed. Further, the property No.552 and Gat No.601/1 are yet to be partitioned.

19. The defendant No.4 became the owner of 30 R. land out of Gat No.892 by way of registered sale-deed and since then it is in her possession and she taking crops in it. Hence, if the injunction is granted, she will suffer an irreparable loss. Thus, defendant Nos.3 and 4 have prayed for rejection of the application.

20. Considering the rival contentions of both the sides, following points arise for my determination, to which I have recorded my findings for the reasons stated below:-

SR. NOS.	POINTS.	FINDINGS.
1.	Whether plaintiff is having <i>prima facie</i> case ?	Yes
2.	Whether balance of convenience lies in favor of plaintiff?	Yes
3.	Whether plaintiff will suffer an irreparable loss if injunction is not granted ?	Yes
4.	What order?	As per final order.

REASONS

As to point No.1:-

21. It is the contention of the plaintiff that the suit properties i.e. 1.20 H.R. out of Gat No.601/1 and 88 R. out of Gat No.892 and the property No.592, all

situated at Mukhed, Tal. Yeola, Dist. Nashik are the ancestral properties of the plaintiff and defendants. In order to substantiate his contention, the plaintiff has filed the 7/12 extract of Gat No.892. I have gone through it. It shows that Pundlik Shripat Aher i.e. the defendant No.1 is owner of 88 R. land, who is now dead. Further, the plaintiff has filed 7/12 extract of Gat No.601/1. I have gone through it. It shows that Pundlik Aher is the owner 1.20 H.R. land. Further, the plaintiff has filed Tax Assessment extract of property No.552. I have gone through it. It shows that Pundlik Shripat Aher and Jijabai Pundlik Aher are the owners of it.

22. Further, the plaintiff has filed the application filed in L.A.R. No. 156/2004 in which Pundlik Shripat Aher has filed this application and demanded the compensation amount of Rs.12,08.904/- deposited in court. The plaintiff has also filed the application filed by Manik Pundlik Aher in L.A.R. No.156/2004 for taking objection for payment of amount to Pundlik Shripat Aher. Further, the plaintiff has filed an application of Manik Pundlik Aher in which he has not-pressed his application taking the objection for payment of money to Pundlik Aher.

23. Further, the plaintiff has filed sale-deed dtd. 06.09.2017. I have gone through it. It shows that Pundlik Shripat Aher had executed this sale-deed of 30 R. land out of Gat No.892 in favour of Mirabai Tukaram Aher.

24. The 7/12 extract of Gat No.892 and Gat No. 601/1 shows that Pundlik Shripat Aher i.e. the defendant No.1 is the owner of 0.80 R. and 1.20 R. land respectively. The record and proceeding shows that Pundlik Shripat Aher i.e. the defendant No.1 is dead during the pendency of the suit. As the plaintiff and defendant No.2 and 3 are the legal heirs of deceased Pundlik, an entry to that effect is recorded at Exh.01.

25. It is the contention of the plaintiff that the defendant No.1 is his father. The 7/12 extract of suit property shows that the suit properties are in the name of defendant No.1. The defendant Nos.1 and 2 have not denied the relationship with the plaintiff. The 712 extract of Gat No.601/1 and Gat No.892 and Tax Assessment of the property No.552 shows that the defendant No.1 was one of the owner of it.

26. I have gone through the plaint. The plaintiff has filed this suit for declaration, injunction and partition. The suit properties are in the name of the defendant No.1, who is died during the pendency of the suit. The plaintiff and the remaining defendants are the only his legal heirs. If the suit properties are transferred by remaining defendants as legal heirs of defendant No.1, no purpose will be served by filing this suit. Hence, it is necessary to protect and preserve the suit properties till the decision of the suit. Hence, I answer point No.1 in the “affirmative”.

As to point Nos.2 and 3:-

27. The documents filed on record prima facie shows that the father of the plaintiff i.e. deceased defendant No.1 is one of the owner of it. The plaintiff has filed this suit for partition of the suit properties. If the injunction is not granted, the plaintiff will suffer an irreparable loss, as he is having prima facie undivided share in it. Whereas, if the injunction is granted, no loss would be caused to the defendants, as they will remain owners of it along with the plaintiff after the death of defendant No.1. Thus, the balance of convenience lies in favour of the plaintiff. Hence, I answer point Nos.2 and 3 as well in the “affirmative”.

As to point No.4 :-

28. In view of the discussion made above and the findings given for the

points Nos.1 to 3, I pass the following order:-

O R D E R

1. The application at Exh.5 is allowed.
2. The defendant Nos.2 to 4 are hereby restrained from alienating the suit properties till the decision of the suit.

Dictated and pronounced in open Court.

Place : Yeola.
Date : 12.12.2022.

(M. S. Ligade)
Civil Judge, Junior Division,
Yeola, Dist. Nashik.

CERTIFICATE

I affirm that the contents of this PDF file Order / judgment are same, word to word, as per the original order / judgment.

Name of Stenographer : P.A. Bargal (L.G. Stenographer)
Name of the Court : Shri. M. S. Ligade, C.J.J.D.,
Yeola, Dist. Nashik.
Date of Order / judgment : 17.10.2022.
Order / judgment signed by
Presiding officer on : 17.10.2022.
Order/judgment uploaded on : 17.10.2022.