



ORDER BELOW EXH.5

1. This application for temporary Injunction is filed by plaintiffs against defendant nos. 1, 2, 6 and 7. In this application plaintiffs are claiming temporary Injunction/s under Order XXXIX Rule 1 of the Civil Procedure Code against these defendants on two counts, to viz, (1) restraining these defendants from alienating or transferring suit properties, and (2) restraining these defendants from prohibiting plaintiffs for performing daily puja, annual festival and other religious ceremonies, pending hearing and final disposal of the suit.

2. I have perused this application, say below Exh.66, 107 and 118 filed by defendant no.1, 2 and 6-7 respectively. I have heard arguments of learned counsels of respective parties at length. The arguments of the parties are almost in line of their respective pleadings. So also I have gone through all the documents including extracts of relevant provisions of law, photographs and pleadings made by the parties concerned.

3. On the basis of pleadings of the parties I have framed following issues for determination of this application, which I



answer them along with my reasons and findings thereon, as follows:

Sr. No.	I s s u e s	Findings

01.	Whether prima facie case is made out by plaintiffs?	.. No.
02.	Whether balance of convenience lies with plaintiffs?	.. No.
03.	Whether plaintiffs are going to suffer inconvenience or irreparable loss or injury in case application for temporary injunction is disallowed?	.. No.
04.	What Order ?	.. Application is rejected.

REASONS

4. AS TO ISSUE NO.1:-

Before I start my discussion, I want to mention here that relief of Injunction is an equitable relief. Therefore, in an application for temporary Injunction, there are few cardinal principles of law under which such type of application must be



decided. Those principles are—prima facie case, balance of convenience and irreparable loss/injury. Apart from such basic principles, there are other parameters also while deciding like application such as, a party must come not only with clean hand but with clean heart and clean mind, a party should not suppress material facts from the notice of the court and the party who is seeking equitable relief must not present his/her conduct which may disentitle him/her to claim such relief. Now, taking note of these principles, I am going to decide present application on the basis of material placed on record by the parties.

5. At one place, in paragraph no.3 of the plaint the plaintiffs plead that suit properties, more particularly described in plaint paragraphs 1A to 1Q, are the ancestral properties of plaintiffs and defendants and that they have their undivided shares in them. However, at another place, in paragraph no.10 of the plaint the plaintiffs further aver that properties at serial no.1A to 1C are joint properties of plaintiffs and defendants and that oral partition has taken place in respect of these properties. Thus, there is inconsistency in the pleadings made by plaintiffs. So also, in paragraph no.11 of the plaint, it is alleged by plaintiffs that properties at serial no.1K and 1L are joint properties of



plaintiffs and defendants and that oral partition has taken place. It is further pleaded by plaintiffs in paragraph no.12 of the plaint that properties at serial no.1/O and 1P i.e. house properties are joint properties of plaintiffs and defendants and that oral partition has taken place. It is also pleaded by plaintiffs that property at serial no.1/O i.e. house property is given to defendant no.6 to 8 by oral partition in which plaintiffs reside. So also it is further pleaded by plaintiffs that property at serial no.1P i.e. house property is given to defendant no.19 to 23 and that plaintiffs accept this previous oral partition and hence plaintiffs do not want to claim partition in respect of these properties.

6. It appears that plaintiffs are blowing hot and cold at one and the same time. Why I say so, because on one hand plaintiffs are coming with a case that they are entitled for 1/4th share in the suit properties as mentioned in the prayer clause of the plaint and on the other hand they are omitting to claim their rights in a few suit properties on account of previous oral partition. It is relevant to point out here that plaintiffs in their pleadings have not given the details of alleged oral partition i.e. date, place, parties etc. The pleadings with respect to these oral partitions are vague. For the sake of arguments, even if it is



presumed that oral partitions have taken place in respect of few properties as alleged by plaintiffs, then a million dollar question arises as to why plaintiffs are seeking opening of partition again. To put it in different words, if really there was some oral partition relating to suit properties and on that basis delivery of possession was made to some coparceners, then, instead of present suit in present form, why the plaintiffs have not lodged the suit for re-opening of partition by making requisite pleadings as required under the Hindu Law, because from the pleadings made by plaintiffs in their plaint, it is evident that they are claiming partition in some properties and are not claiming partition in a few properties. The plaintiffs should understand that, under Hindu Law, it is a must in a suit for partition that all the coparcenary properties should be joined; otherwise partition cannot be valid and complete. Thus, it appears that plaintiffs are making pleadings as per their choice and convenience, which cannot be sustained in the eye of law.

7. In paragraph no.12 of this application plaintiffs have stated that house property at serial no.1/O is given to defendant nos.6 to 8 in the oral partition and that plaintiffs do reside therein. However if the original copy of Namuna no.8 maintained by



Gram Panchayat dated 27.7.2021 is perused, prima facie, it appears that this property at serial no.1/O bearing property no.705 is standing in the name of Ramchandra Ganpati Baddhe (Devghare) and Jankubai Ramchandra Baddhe as owners and they are the occupants over it. Thus, there is again inconsistency with respect to pleadings made by plaintiffs and the document filed on record.

8. Record of this case shows that previously also plaintiffs had instituted an application below Exh.41 claiming Injunction restraining defendant no.1 from stopping plaintiffs for the '*Somwati Amavasya*' religious program on 6-9-2021. The said application was rejected by the predecessor of this court on 3.9.2021. Further, record also discloses that plaintiffs again had filed an application below Exh.60 on 29-9-2021 thereby claiming Injunction against defendant no.1 from resisting plaintiffs for the religious ceremony on 7-10-2021. The said application, too, was rejected by the predecessor of this court on 6-10-2021. Although said order on Exh.60 was restricted to a particular religious ceremony, yet the said order depicts that the predecessor of this court arrived at a conclusion that plaintiffs have no prima facie case and that the conduct of plaintiffs is not free from blame and



they did not approach the court with clean hands. The learned counsel for the defendant no.1 argued that plaintiffs have not challenged this Order on Exh.60 before appropriate court and instead directly preferred Writ Petition no.6786 of 2021 before the Hon'ble High Court. That Writ Petition is now disposed off.

9. It is to be noted that the plaintiffs have instituted present application for temporary Injunction against defendant no.1 to 14. However, on 13.9.2022 the plaintiffs have passed a pursis below Exh.128 stating therein that they want to proceed against defendant no.1, 2, 6 and 7 only, for the purpose of present application. Not only this but the plaintiffs have also filed another application below Exh.129 on 13.9.2022 for amendment under Order VI Rule 17 of the Civil Procedure Code to the effect that defendant nos.12 to 14 have died and their heirs are required to be brought on record. In this application for amendment below Exh.129 the plaintiffs have prayed that permission to amend in plaint and Exh.5 etc. be given. In the said application below Exh.129, it is stated on oath by plaintiffs that defendant no.12 and 13 died on 12.6.2016 and 27.7.2017 respectively, whereas no specific date of death of defendant no.14 is given in second unnumbered paragraph on page no.3 of this application



(Exh.129). Needless to mention, present suit has been lodged by plaintiffs on 2.8.2021. Thus, it is clear that plaintiffs have instituted present suit against dead persons/defendant no.12 to 14. It is pertinent that if the entire application below Exh.5 is perused then it becomes crystal clear that plaintiffs have made many allegations against defendant no.1 to 14, including deceased-defendant no.12 to 14. When plaintiffs are making specific averments/allegations in connection with cause of action for institution of suit against defendants, including deceased defendants, then it is to be remembered that they are making such averments with their own responsibility. Thus, it is apparent that plaintiffs have made vacuous allegations against dead-persons (defendant no.12 to 14).

10. The defendants in their defence pleadings have resisted this application on the ground that all the heirs are not joined in this suit for partition and hence the suit is bad for non-joinder of necessary parties. I find substance in this contention made by defendants in light of the aforesaid application below Exh.129. In addition to this, plaintiffs are also claiming partition in the temple (property at serial no.1Q). This claim is strongly resisted by these defendants. The certified copy of Property



Record Card bearing CTS no. 341 and 347 do prima facie shows that they belonged to “Shri Mhaskoba Mandir” and the name of the Care-taker is Sarpanch, Gram Panchayat, Kodit (Bk). Thus, it is clear that it does not bear names of either plaintiffs or defendants. The Sarpanch is also not made party by the plaintiffs for throwing more light on the facts of this case. The learned counsel for defendant no.1 argued that Diety is not party though Trust is not registered and that defendant no.1 has preferential right of ‘*Manache Adhikar*’ (Honourable Right) as per traditional customs being elder son from the elder branch of deceased Ganpat. The plaintiffs in their pleadings made in this application in paragraph no.16 pleaded that this temple property (at serial no.1Q of the plaint) is in possession of defendant no.1 to 14 and this fact is admitted by defendants in their defence pleadings. The plaintiffs and defendants have filed affidavits in support of their respective claims as regard customary right of worship etc. The affidavits are as good as oath against oath. Therefore, at this stage, they are not helpful and they need to be tested at appropriate stage.

11. Learned counsel for the defendant no.1 argued that the family idol or the family place of worship also cannot be



partitioned. He referred to a provision of Hindu Law. I have gone through the relevant extract of the Hindu Law. At this juncture, I want to refer to **Chapter XVI, Paragraph 302, 21st Edition, Reprint 2012, of the Hindu Law by Mulla, which provides under the head ‘Idols and Places of worship’ that Family idols and places of worship are not divisible (Manu, Chapter IX, verse 219).** They may be held by the members in turns, or the court may direct possession to be given to the senior member with liberty to the other members to have access to them for the purpose of worship.’ Thus, the claim of partition of the Temple which is a place of worship appears to be against the provisions of Hindu Law itself.

12. The learned counsel for the plaintiffs argued that defendants are intending to alienate ancestral properties and hence Injunction is necessary. However this contention is strongly resisted by learned counsel for defendant no.1 who argued that according to plaintiffs, properties are ancestral and hence there is no need of granting Injunction. I find substance in this contention made by defendant no.1 having regard to the Hindu Law. Besides, general apprehension is made by plaintiffs regarding alleged attempt of alienation. Everything would be



decided on merits after giving opportunity of evidence to all the parties in due course of trial. After perusal of revenue and other documents including extracts of consolidation scheme produced on record and having regard to aforesaid discussion, I find that plaintiffs have not made out a prima facie case in their favour for the grant of temporary Injunction in light of the above discussion. So I answer issue no.1 in the negative.

13. AS TO ISSUE NO.2 & 3:-

In answer to issue no.1 I have already concluded that plaintiffs have failed to prove prima facie case which needs to be enquired into by the court. Therefore, I am of the considered opinion that when plaintiffs failed to prove prima facie case, then other factors like balance of convenience and irreparable loss or injury are immaterial for the purpose of this application. Even otherwise, in the facts and circumstances of this particular case, more inconvenience is going to be caused to the defendants than plaintiffs if this application is allowed. The upshot of the aforesaid discussion is that the plaintiffs are not coming with clean hand. A party must not only come with clean hand but with clean heart and clean mind to claim an equitable relief of Injunction, which is lacking in the present application. The



conduct of the plaintiffs, as noted herein above, disentitle them to claim the relief of Injunction. Relief of Injunction is a discretionary relief. In the facts and circumstances of this case I do not want to exercise my discretion in favour of the plaintiffs. Hence, I answer issue no.2 and 3 in the negative.

14. AS TO ISSUE NO.4:-

In answer to issue no.1 to 3, the application for temporary Injunction is liable to be rejected. Hence, I hold my finding to issue no.4 accordingly.

15. However, learned counsel for defendant no.1 during his arguments pointed that plaintiffs have also right of worship in the said temple like any other villagers and hence there is no infringement of any legal right of the plaintiffs at the hands of these defendants. The learned counsel for defendant no.1 also drew attention of this court towards paragraph no.55 of the written statement/say filed by defendant no.1 and 5 below Exh.66 with respect to some rights of worship. I have gone through that paragraph no.55. Taking note of the sentiments of the plaintiffs and pleadings in paragraph no.55 made by defendant no.1 and 5 in written statement/say below Exh.66, I am of the considered



view that by invoking power under Section 151 of the Civil Procedure Code, plaintiffs may be permitted to offer prayers in the said temple i.e. Shrinath Mhaskoba Mandir like any other villagers only to the extent as stated by defendant no.1 and 5 in paragraph no.55 of their written statement/say below Exh.66 as mentioned in the following order. Resultantly, I pass following order.

ORDER

- I. Application Exh.5 is hereby rejected.
- II. Plaintiffs are permitted to offer prayers in the said temple i.e. Shrinath Mhaskoba Mandir like any other villagers only to the extent as stated by defendant no.1 and 5 in paragraph no.55 of their written statement/say below Exh.66, which is re-produced as under:

“श्रीनाथ म्हस्कोबाचे सर्व धार्मिक उत्सवामध्ये इतर भाविकांप्रमाणे व गावक-यांप्रमाणे सामिल होण्याचा, देवाची प्रार्थना करणे, देवदर्शन घेणे, गुलाल वाहणे, नैवेद्य दाखविणे, नारळ फोडणे, कापुर व अगरबत्ती लावणे इ. प्रकारचे वादी यांना देखील अधिकार आहेत.”

- III. Costs in main cause.

Date:-22/09/2022.

(Md. Taher Bilal)
Civil Judge J.D., Saswad.

14 **Order below application Exh.5**
Reg. Civil Suit No.186 of 2021
Shankar & Others Vs. Anil & Others
MHPU130005622021



CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of Steno : S. S. Gupte, Stenographer (Grade III)

Court Name : Shri. Md. Taher Bilal
Civil Judge Jr. Division, Saswad.

Date of Order : 22/09/2022

Judgment signed by presiding officer on : 22/09/2022

Judgment uploaded on : 23/09/2022