

ORDER BELOW EXH.65
[Delivered on :-08/02/2024]

1. This is an application by plaintiff for temporary injunction against defendant no. 1 to 6 for restraining them not to dispose off the property or create third party interest in the suit property till disposal of suit property.

2. It is the case of plaintiff that, the property at Mouje Jiregaon, Tal-Daund. Gat No. 148 total area 2,00 R the four boundaries are,

- 1 a) East :- Gat No. 147.
West :- Gat No. 149.
South :- Gat No. 147.
North :- Gat No. 149.

- b) Gat no. 218 total area 00.48R the four boundaries are,
East :- Gat No. 217
West :- Gat No 219
South :- Gat No. 214
North :- Road.

- c) Gat no. 151 total area 3H. 13 R. The four boundaries are,
East :- Pandhan road
West :- Gat no. 150
South :- Gat No. 149
North :- Gat No. 159

- d) Gat no. 223 total area 00. 67.1 R . The four boundaries are,
East :- Gat No. 222
West :- Road

South :- Gat No. 225

North :- Road and Gat No. 221.

e) Gat no. 496/1 total area 6H. 74 R out of it 3H 37R . The four boundaries are,

East :- Gat no. 496B

West :- Kurkumbh shiv

South :- Gat No. 492B

North :- Gat No. 497, 498, 499.

f) Gat no. 533 total area 00H 26 R. The four boundaries are,

East :- Gat no. 213

West :- Gat no. 227

South :- Gat No. 211 and 292

North :- Gat No. 214.

g) House property no. 200 open area, 14. 86 Sq.mt and constructed area 14.86 sq.mt.

h) Gat no. 213 total area 00H. 18 R. The four boundaries are,

East :- Gat no. 92

West :- Gat no. 533

South :- Gat No. 260

North :- Gat No. 214

(Above mentioned properties are referred as “suit property” for the sake of brevity)

3. Defendant no.1 is father of plaintiff no. 1 and 2 and husband of plaintiff no. 3. Defendant no. 1 is father of defendant no. 2 and 3 and husband of defendant no. 4. Defendant no. 2 and 3 are real brother. Plaintiff and defendant have ancestral

agriculture and house property at Jiregaon. Suit properties are their ancestral properties. Gat no. 148 and 151 are purchased by great grand father of plaintiff and mother of defendant no. 1 and grand mother of defendant no. 2 and 3. As suit properties are ancestral properties plaintiff have share in the said property. Defendant no. 3 thrown plaintiff out of his house without any reason. Defendant in order to grab the suit properties and in order to deprived the right of plaintiff tried to record their name in 7/12 extract. Suit properties are yet not partition. When plaintiff asked for partition defendant denied to do so. During the pendency of the suit defendant no. 1 to 4 with their maternal aunt filed RCS No. 414/2022. As per the decree in RCS No. 414/2022 defendant no. 6 and 1 to 5 recorded their name in 7/12 extract. The compromise and decree in RCS no. 414/2022 is obtained behind the back of plaintiff. On the basis of entry of their name in the 7/12 extract if defendant tried to create third party interest in the suit property. Then they will suffer irreparable loss therefore, plaintiff prayed for temporary injunction against defendant for restraining them not to dispose off the property or create third party interest in the suit property till disposal of suit property.

4. Defendant no. 6 has filed his reply at Exh.77. He denied all adverse allegations and submitted that the description of suit properties are not proper. So also, the genology not properly mentioned. Plaintiff have not joined necessary parties in the suit. So also, they have not properly valued the suit. Further, plaintiff have no right to challenge the decree in RCS No. 414/2022. Defendant no. 1 is his brother, defendant no. 2 is wife of brother

and defendant no. 3 and 4 are his nephew and niece. Father of defendant no. 6 and 1 is died long back ago. Defendant no. 6 was married and residing with her in laws. Due to their family dispute defendant no. 6 asked partition in the suit properties. Defendant denied to do so, therefore, she filed RCS No. 414/2022 for partition and injunction against defendant no. 1 to 4. The said suit was compromised between them. Accordingly, as per decree their name were recorded in 7/12 extract by mutation entry no. 4464. The said mutation entry is yet not challenged. She has no knowledge of the pendency of the suit between plaintiff and other defendant. As per decree in RCS no. 414/2022 she is owner and in possession of the suit property. Therefore, plaintiff has no right to claim injunction against her. Therefore, prayed for rejection of the application with cost of Rs. 25,000/-.

5. Defendant no. 1, 3 and 4 filed their say at Exh. 15. They denied all adverse allegation and submitted that defendant no. 1 has sister namely Samabai Borkar. She has share in the suit property. However, she is not added as a party in the suit. So also, plaintiff has not added mother of defendant no. 1. Also has not added co sharer in gat no. 223. Therefore, suit is bad for non joinder or necessary party. Plaintiff have not added all properties in the suit. Therefore, suit is liable to be rejected. Further submitted that, gat no. 148 and 151 are self acquired property of defendant. In 2002 the said property are partitioned as per the order of Tahsildar. Accordingly, as per mutation entry no. 1385 it is recorded in 7/12 extract. Therefore, question of partition of the said property does not arise. Gat no. 218 is ancestral property of

defendant no. 1. Since partition it is in his possession. Gat no. 496/1 total 1 H 90 R land is self acquired property of defendant no. 1. Therefore, plaintiff and defendant no. 2 to 4 has no concern with the said property. Gat no. 533 is self acquired property of defendant no. 2. Defendant no. 1 purchased 17 R in Gat no. 233. It is his self acquired property. Suit is not maintainable. Therefore, prayed for rejection of the application.

6. Defendant no. 5 filed the say of Exh. 43. He denied all adverse allegations and submitted that defendant no. 3 has sold his share in gat no. 151 to defendant no. 5 by way of registered sale deed no. 152/2013. Accordingly, his name entered in 7/12 extract. Since sale deed he is in possession and he is bonafide purchaser. Hence, prayed for rejection of the application.

7. Defendant no. 2 by filing pursis at Exh. 19 adopted the say and written statement of defendant no. 1, 3 and 4.

8. Heard, learned advocate on behalf of plaintiff and defendant. Perused the record. On the basis of contention, following points arise for my determination to which I have recorded my findings on the basis of reason given below ;

SR. No.	POINTS	FINDINGS
1.	Does plaintiff prove that he has prima-facie case in his favour ?	In the affirmative.
2.	Does plaintiff prove that the balance of convenience lies in his favour ?	In the affirmative.
3.	Does plaintiff prove that he will suffer	In the affirmative.

from an irreparable loss, if temporary
injunction as sought for is not granted ?

4. What order ?

As per final order

REASONS

9. To substantiate their respective claims, parties have placed their reliance on documentary evidence. Plaintiff has filed copy of order and decree in RCS no. 414/2022, copy of mutation entry no. 4462, copy of 7/12 extract of Gat no. 223, 496/1, 148, 151, 218, 213, 533. Defendant no. 6 has filed copy of 7/12 extract and namuna 8 of gat no. 218, 151, copy of mutation entry no. 4464.

AS TO POINT No. 1 to 3 :-

10. As all of these points are interlinked with each other, I have taken them together for discussion to avoid repetition.

Plaintiff argued that the suit properties are ancestral property of plaintiff and defendant. The suit properties are recorded in the name of defendant on the 7/12 extract . Being son, wife of defendant no. 3, they have right in the suit properties. Till today no partition effected between plaintiff and defendant. During the pendency of the suit defendant no. 1 to 4 with their maternal aunt filed RCS No. 414/2022. As per the decree in RCS No. 414/2022 defendant no. 6 and 1 to 5 recorded their name in 7/12 extract. The compromise decree in RCS no. 414/2022 is obtained behind the back of plaintiff. On the basis of entry of their name in the 7/12 extract if defendant tried to create third party

interest in the suit property. It is the plaintiff who will suffer irreparable loss. Therefore, plaintiff prayed for temporary injunction against defendant for restraining them not to dispose off the property or create third party interest in the suit property.

11. To support their contention they relied upon copy of 7/12 extract of Gat no. 223, 496/1, 148, 151, 218, 213, 533 copy of mutation entry. On perusal of 7/12 extract of gat no. 223, 496/1, 148, 151, 218, 213, 533 it appears in gat no. 223 is the name of defendant no. 1, 2 On perusal of 7/12 extract of Gat no. 996/1 appears in name of defendant no. 1 and 2. On perusal of 7/12 extract of Gat no. 148 it is in the name of defendant no. 1 to 4, On perusal of 7/12 extract of gat no. 151 it is in the name of defendant no. 2, 4, 5, 6, On perusal of 7/12 extract of gat no. 218 it is in the name of defendant no. 1 and 6, On perusal of 7/12 extract of gat no. 213 it is in the name of defendant no. 2 and 4, On perusal of 7/12 extract of gat no. 533 it is in the name of defendant no. 2, on perusal of mutation entry no. 4464 it appears that as per order in RCS No. 414/2022 Gat no. 218, 151, 148, 223, 496/1 and 213 was partitioned between Subhadra and defendant no. 1 to 4. On perusal of RCS No. 414/2022 it appears that matter was compromised in Lokadalat in view of compromise decree was passed.

12. On the other hand, defendant argue that, plaintiff have no right to challenge the decree in RCS No. 414/2022. suit is bad for non joinder or necessary party. Plaintiff have not added all properties in the suit. Therefore, suit is liable to be rejected. Further argued that, Gat no. 148 and 151 are self acquired

property of defendant. In 2002 the said property are partitioned as per the order of Tahsildar. Accordingly, as per mutation entry no. 1385 it is recorded in 7/12 extract. Therefore, question of partition of the said property does not arise. Gat no. 218 is ancestral property of defendant no. 1. Since partition it is in his possession. Gat no. 496/1 total 1 H 90 R land is self acquired property of defendant no. 1. Therefore, plaintiff and defendant no. 2 to 4 has no concern with the said property. Gat no. 533 is self acquired property of defendant no. 2. Defendant no. 1 purchased 17 R in Gat no. 233. It is his self acquired property. Defendant no. 3 has sold his share in gat no. 151 to defendant no. 5 by way of registered sale deed no. 152/2013. Accordingly, his name entered in 7/12 extract. Since sale deed he is in possession and he is bonafide purchaser. Therefore, prayed for rejection of the application.

13. To support their contention they relied upon copy of 7/12 extract of Gat No. 218, 151, mutation entry no. 4464, namuna 8a extract of Gat no. 218. On perusal of at appears that Gat no. 151 of 218 is in the name of Subhadra Borakar, on perusal of mutation entry it appears that as per the order in RCS No. 414/2022 partition of Gat no. 218, 151, 148, 223, 996/1/g, 213 is executed between Subhadra and defendant no. 1 to 4.

14. So far as contention of defendant is concerned that suit properties are their self acquired property and plaintiff have no concerned with the said property. Further, it is the contention of defendant that in 2002 the said property are partitioned as per the order of Tahsildar. Whether suit properties are self acquired

property of defendant or not and whether suit properties are already partitioned or not will be considered at the time of trial. At this stage this fact need not to be considered. Therefore, contention raised by defendant cannot be taken into consideration at this stage.

15. Temporary injunction is granted where it is proved by affidavit or otherwise that defendant threatens to dispossess plaintiff or otherwise cause injury to the plaintiff in relation to the property in dispute. In the case in hand, it is contention of plaintiff that they are legal heir of defendant no. 3. Suit properties are ancestral property. They are having right in the suit property. Defendant no.1 to 4 along-with defendant no. 6 recorded their names in the suit property on the basis of compromise decree in RCS No. 414/2022. If, by taking advantage of their name in the 7/12 extract they create third party interest then plaintiff will suffer irreparable loss.

16. While deciding present application it is necessary to see whether plaintiff proved their prima facie case in support of the right claim by them. The burden is on the plaintiff to satisfy that there is bonafide dispute, there is strong case for trial which needs investigation and decision on merit and on fact before the court. There is possibility of applicant being entitled to the relief claimed by him. In the case in hand, plaintiff has filed present suit for partition and permanent injunction. On perusal of documents filed on record, prima facie it appears that suit properties are in the name of defendant. Further, it is not disputed fact that plaintiff no. 1 and 2 are son and plaintiff no. 3 is wife of defendant no. 3.

Prima facie being son and wife of defendant no. 3 plaintiff have interest in the suit property. Further, plaintiff came with the relief of partition. Prima facie it appears that plaintiff asked for partition however, defendant denied to do so. Further, prima facie it appears that share of parties are yet to be determine.

17. The documents filed on record prima facie it appears that there is probability of the plaintiff being entitled to the relief claimed by them. Therefore, considering all these facts on record prima facie shows that plaintiff has prima facie case. Plaintiff claiming their share in the suit property. If, the injunction is refused then it is the plaintiff who will suffer injury than the defendant. Therefore, balance of convenience lies in favour of plaintiff. Irreparable injury means that the injury must be material one i.e. which cannot be adequately compensated by damages. In the case in hand, it is the contention of plaintiff that their share in the suit properties are yet to be given. On perusal of documents filed on record prima facie it appears that suit property is in the name of defendant. Therefore, plaintiff having apprehension that on the basis of that entry of his name in the record of right. Defendant are trying to create third party interest. Prima facie record shows suit properties are ancestral property. Therefore, if defendant no. 1 to 6 are not restrained then they may create third party interest. Therefore, the injury which will cause to the plaintiff will materially would affect their position. Therefore, if injunction as prayed is not granted then it will cause irreparable loss to the plaintiff. Considering all these aspects in order to prevent multiplicity of proceeding and also that proceeding should

go on as far as possible so smooth that decision can be arrive at between the parties. It is necessary to protect the property and to prevent defendant from causing injury to the plaintiff in relation to suit property till the decision of the suit or until further order. So also, it is just to preservation of property in dispute till legal rights are adjudicated. I find it just and proper to restrain the defendant from creating third party interest in the suit property. Therefore, considering all above facts plaintiff proved their prima facie case, balance of convenience, irreparable loss in their favour. Therefore, I answer to point no. 1 to 3 in affirmative and in answer to point no. 4 , I pass following order.

ORDER

1. Application is allowed.
2. Defendant no. 1 to 6 or their agent or any other person on their behalf is temporarily restrained from not to dispose off the property or create third party interest in the suit property till disposal of suit property.

SD/-

Dt- 08.02.2024.

(S. D . Mukkanwar)
2nd Jt. Civil Judge, Junior Division,
Daund, Dist. Pune