

CNR NO. MHPU18-002580-2017

ORDER BELOW EXH.5 AND EXH.38 IN
RCS NO.425/2017

1] The present suit came to be filed for the relief of declaration and in alternative for the relief of partition alongwith permanent injunction with respect to suit property.

2] The case of the plaintiff is that by the Mutation Entry(in short 'ME') No. 2588 the partition was effected of the suit property amongst the plaintiff and defendant No.1. According to that partition 97 R. land each was allotted to the plaintiff and defendant No.1. In view of that partition Gat No. 788 was divided in two parts with new identified Gat No 788/1 and 788/2. Thereafter, Gat No. 788 was renumbered as Gat No. 792 and the portion of 97 R. land allotted to the plaintiff was renumbered as Gat No. 792/1, whereas the portion of 97 R. land given to the defendant came to be renumbered as Gat No. 792/2. According to plaintiff although the partition was effected, Falani map that is demarcation of Sub. Division of original Gat Land was not effected or carried out. In this matter of fact plaintiff has brought this suit for the partition of suit land.

3] Plaintiff has further averred that, the sugarcane crop standing in the suit property was harvested and further sent to the sugar factory for the crushing year 2015/2016, however, the dispute arouses on the cause of payment of bill in between the plaintiff and defendant. That dispute was settled with

understanding. Again for the crushing year 2016-2017 and 2017-2018 sugarcane crop standing in suit land was sent to the sugar factory. According to plaintiff the payment of bill of that sugarcane crop is required to be stopped as there was no partition effected by meets and bounds. It is also stated that in spite of there was amicable partition of 97R. land each to the plaintiff and defendant, the defendant made the entry of all the sugarcane crop standing in entire suit property in his name with the sugar factory. Therefore, plaintiff as per his contention apprehended that defendant may harvest entire sugarcane in his name and may draw entire bill for his sole benefit. Therefore, plaintiff has also prayed for relief of permanent injunction restraining the defendant from harvesting the standing sugarcane crop in the suit property, and also restraining the defendant from causing any disturbance to the said crop.

4] The plaintiff has further stated that it may take long time to decide on merit all issues involved in present suit. Mean the while there is every possibility that defendant may harvest the entire sugarcane crop and may draw the entire bill for his own benefit only. If this happens then plaintiff will be put in the heavy loss. It may not be atoned in the terms of money. Plaintiff asserts the prima facie case and the balance of convenience in his favour. Hence, he prayed for the order of temporary injunction in the above form.

5] The defendant has filed the say below Exh. 21. He denied the contention of plaint in toto. He has admitted that

partition was effected as per Section 85 of Maharashtra Land Revenue Code and at that time they both were put in the respective possession of their allotted land. It is also stated that the suit is filed without cause of action. Such relief cannot be granted when plaintiff himself contends that suit property is still belongs to joint family. Defendant says that though the partition was effected entire suit land is in his possession. He has spent lot of money in the cultivation of sugarcane crop. If injunction as prayed is issued then defendant would suffer irreparable loss. On the other hand plaintiff would not suffer any loss if prayer of injunction is refused. With this defendant concludes that application below Exh.5 is devoid of merit and, therefore, liable to be dismissed.

Points

6] Considering the rival pleadings of the parties the following points arise for my determination and my finding thereon with reasons are as under :

Sr. No	POINTS	FINDINGS.
1	Whether the plaintiff has proves prima-facie case ?	 Negative
2	Whether the balance of convenience lies in favour of plaintiff ?	 Negative
3	Whether the plaintiff will suffer irreparable loss, if the temporary injunction is rejected ?	 Negative
4	What order ?	As per final order.

REASONS

AS TO POINT NO. 1 TO 3 :-

7] From the rival contentions of the parties it is made crystal clear that partition as per Section 85 of Maharashtra Land Revenue Code was effected in between plaintiff and defendant. Despite the fact of admitted partition the plaintiff has not given the four boundaries of his 97 R. land in the plaint. He has made the whole area of Gat No.788 (New Gat No. 792) as the subject matter of this suit. Only because of the Falni Nakasha (map) was not prepared the plaintiff has brought this suit for partition. It is settled proposition of Hindu Law that once the status of joint family is broken and severed no further partition can be allowed unless in certain circumstances' plea of partial partition or repartition on the ground of inequitable partition is taken.

8] Having regard to the above it appears that Plaintiff can initiate the lawful proceeding before the collector for the sub division of Gat. No. 788 (New Gat No. 792) as per the partition effected by the mutation entry no. 2588. The plaintiff has nowhere stated in the plaint that he is in the possession of his respective allotted portion 97 R land. on the contrary defendant has stated that, though the partition was effected the entire suit property Gat No. 788 was given into his possession as plaintiff was working in the Police department at Mumbai. According to defendant he has spent or defrayed the lot money on the cultivation of sugar cane in the suit property. Since the plaintiff has not stated specifically that on which side he is possessing 97 R land & as the description of

plaint is silent in this respect it prima facie fortifies the contention of defendant that he is in possessing of entire suit land and has incurred lot expenditure on the growing of standing sugar cane in the suit property.

9] Another development of this suit is that plaintiffs sister have raised an objection over the previous partition. The stand of plaintiff that at one side he contends the previous partition & on other side he asks for partition can not sustain in the eyes of law. In this factual background presumption of jointness of Hindu family prevails over the contention of plaintiff. If it is held prima facie that family is joint then it can be said at this juncture that suit property is not partitioned & all co-sharers are having undivided share. If this is the position then in that case relief of injunction cannot be issued against the co-sharer. In these facts and circumstances the application below exh. 5 and 38 does not survive. Plaintiff fails to prove the prima facie case, principal of comparative loss & hardship. With this I answer the point No 1 to 3 in Negative & proceed to pass following order.

ORDER

Application Exh. 5 & 38 stands rejected

Pronounced in open court.

Date : 20/02/2018.

Place : Daund.

(V. F. Chougule)
Civil Judge Jr. Division, Daund
Tal.-Daund, Dist.-Pune.

CERTIFICATE

“ I affirm that the contents of the P.D.F. File Judgment are same word for word as per original judgment.

Name of Steno	- Miss. F. J. Bijapure,
Court Name	- V. F. Chougule, Judicial Magistrate First Class, Tal.-Daund, Dist.-Pune.
Date of order	- 20.02.2018.
Order signed by P.O.	- 20.02.2018.
Order uploaded on	- 20.02.2018.