

MHPU180034192023



R.C.S. No. 476/2023
Sharda & Ors
Vs.
Ramchandra & Ors.

ORDER BELOW EXH.5
(Passed on 01/03/2024)

This is an application filed by plaintiffs against defendant Nos. 1 & 2 for temporary injunction as under.

2. According to plaintiffs, they have filed suit for declaration with perpetual injunction and partition. The land admeasuring 68 R out of gut no. 32/1 bounded as under.

Towards East : Forest land.
Towards South : Gut no. 33.
Towards West : The land of Shri. Sorte out of gut no. 28.
Towards North : Gut no. 32/2, 32/3

And the land admeasuring 81 R, out of which 67 R. land in gut no. 62/1 bounded as under.

Towards East : Gut no. 63.
Towards South : Gut no.58, 60 & 61.
Towards West : Urli Kanchan Boribhadak shiv road.
Towards North : Out of the same, the land of Alka Balasaheb Yelkar and thereafter, gut no. 62/2.

Both lands situated at village Boribhadak, Tal. Daund, Dist. Pune. (Hereinafter referred as "suit properties" for the sake of brevity).

3. Initially suit propertis was in the name of father of the defendant no. 1 and grandfather of defendant nos. 2 and 3 namely Sakharam Manu Yelkar. After his demise the names of his legal heirs have mutated vide mutation entry no 402. Thereafter, the partition has executed in between the defendant no.1 and his 3 brothers on 13/01/1992. It has mutation entry no. 738. Therefore, the suit

properties are ancestral and joint family properties of parties to the suit. Plaintiffs have given pedigree of the same. No any partition has taken place in between plaintiffs and defendants till today.

4. Despite this with intents to grab the share of plaintiffs the defendant no. 2 got executed gift deed from the defendant no. 1 in respect of the land admeasuring 63 R out of the gut no. 62/1 on 29/08/2023 vide its no. 5166/2023 out of the suit properties. The defendant no.1 has no any right to execute the alleged gift deed. Therefore, it is bogus and illegal. Plaintiffs have taken objection for the mutation of revenue entry in that regard to the concern Talathi.

5. Plaintiffs have sought partition in respect of the suit properties but, defendants have flatly refused for the same. As the defendant no.1 & 2 brought into existence the alleged gift deed they are also in haste to create another third-party interest over the suit properties. Hence, plaintiff have constrained to filed this application to restrain them from creating any third-party interest or making alienation of suit properties till the disposal of the suit. Hence, this application.

6. Defendant nos. 1 & 2 have appeared and filed their written statement at Exh. 23. They have strongly opposed the suit of plaintiff and thereby submitted that, the present suit is not tenable and maintainable in the eyes of law. No any cause of action has arisen to them so as to file the present suit. In true fact of the case, they have submitted that, properties out of gut nos. 32, 62, 234 of village Boribhadak have separate properties of Sakharam Yelkar. There has $\frac{1}{4}$ each share of his 4 sons namely Ramchandra, Balasaheb, Dhondiba and Tukaram. The Sakharam had filed application in the year 1982 to Tahsildar, Daund to mutate names of his four sons to said properties. Accordingly, their names have recorded by the order of Tahsildar dt.

23/08/82. However, till date the partition has not executed in between the said four sons of Sakharam by means and bounds. Unless and until partition has taken place between them, plaintiffs have no any right to claim partition in the suit property.

7. Later on, the gut no. 32 & 62 bifurcated into parts. However, plaintiffs have not added said portions and the land in gut no. 234 in the suit. Furthermore, plaintiffs have not added house properties in the suit. Therefore, on this count also suit of the plaintiffs is not tenable and maintainable. Furthermore, plaintiffs have also not added the co-owners of the said gut numbers. Plaintiffs have not valued the suit properly despite the value of suit properties is of Rs. 24,11,330/-. Hence, they lastly prayed to reject the present application with compensatory cost of Rs. 25,000/-.

8. Perused the application and say. Heard both the Ld. Advocates for plaintiffs and defendants at considerable length. On perusal of the contents of the application and say following points are arise for my determination and I have recorded my findings against each of them with reasons as under:-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether prima facie case is made out by plaintiffs ?	In the Affirmative
2.	Whether balance of convenience lies in favour of plaintiffs ?	In the Affirmative
3.	Whether irreparable loss will be cause to plaintiffs if temporary injunction is not granted?	In the Affirmative
4.	What order ?	As per final order

REASONS

9. In order to prove their contentions, plaintiffs and defendants have filed various documents on record those will be discussed at the relevant time.

As to Point nos. 1 to 3: -

10. All these points are interlinked with each other therefore they are taking for discussion for together in order to avoid the repetition. It is the case of plaintiffs that, the suit properties is ancestral and joint family properties of parties to the suit. It has inherited to the defendant no.1 from his father. Despite this he has executed gift deed in respect of portion of the suit properties to the extent of 63 R, out of gut no.62/1 on 29/08/2023 vide its no. 5166/2023 in favour of the defendant no. 2. The defendant no. 2 is the son of the defendant no. 1 whereas plaintiffs have daughters of the defendant no. 1. Therefore, plaintiffs have sought partition by meats and bounds to the extent of their share to the defendant no.1 but, the defendant no. 1 flatly refused for the same. As defendant nos. 1 & 2 have created an interest in the suit properties they are also in haste to create third party interest over suit properties by alienating the same. If they have succeeded in their over act plaintiffs will suffer irreparable loss which will not be compensated in terms of money. Hence, by filing this application plaintiffs have sought injunction against defendant nos. 1 & 2.

11. Per contra, according to defendant nos. 1 & 2 the father of the defendant no. 1 mutated the names of defendant no.1 with his 3 brothers to the ancestral properties. However, there is no any partition has taken place in between them by meats and bounds in respect of suit properties. Plaintiffs have not added all properties and necessary parties in this suit therefore, on this count also the suit of plaintiffs is not maintainable and tenable in the eyes of law. Plaintiffs have also not valued the suit properly. Hence, on this count these defendants have

prayed to reject the present application with compensatory cost of Rs.25,000/-.

12. The Ld. Advocate for plaintiffs in order to prove his contention relied on the authority of the Hon'ble Madhya Pradesh High Court in the case of **Parmal Singh And Others vs Ghanshyam And Others** arising out of Second Appeal No. 373/2001. In this case the Hon'ble Madhya Pradesh High Court held that,

“It is well established principle of law that unless and until the property is partitioned, the co-sharer can only sell to the extent of his share, but he cannot sell any specific portion of the land”

13. I have carefully gone through the entire facts of the application and say along with ratio laid down in the authority cited supra. On perusal of the same it appears that, plaintiffs have filed revenue record of the suit properties. The mutation entry no. 402 and 738 clearly goes to show that, the father of defendant no. 1 partitioned suit properties in favour of the defendant no.1 and his brothers. The mutation entry no. 738 also goes to show that, Tahsildar, Daund executed partition in respect of suit properties in favour of the defendant no.1 and his brothers. Furthermore, plaintiffs have also placed on record the copy of registered gift deed bearing day book no. 5166/2023 dated 29/08/2023. This document clearly goes to show that, the defendant no.1 executed the gift deed in favour of the defendant no.2 in respect of the land admeasuring 63 R out of the gut no. 62 i.e. one of the suit properties.

14. It is pertinent to note here that, though it is the contention of defendants that, the partition of the suit property has not executed by meats and bounds in between the defendant no.1 and his brothers, the defendant no. 1 has mentioned four boundaries and portion which

had in his possession in the said gift deed. These things clearly goes to show that, the separate property which was in name of the defendant no. 1 has gifted by him in favour of the defendant no.2.

15. Furthermore, the act of these defendants clearly goes to show that, they have created interest in the suit property by excluding plaintiffs though they have coparceners of joint family by way of alleged gift deed. Hence, considering these aspects and the ratio laid down in the authority cited supra it is necessary to restrain to these defendants from creating third party interest over the suit properties till the disposal of the suit. Record clearly goes to show that, plaintiffs have prima facie case. The balance of convenience also lies in favour of plaintiffs. So, it is required to protect the interest of plaintiffs at the hands of defendants, otherwise if defendants succeeds in their overt act i.e., to create third party interest in the suit property, plaintiffs will have suffered irreparable loss which will not be compensated in terms of money. Hence, in the light of above discussion I record my findings to point no. 1 to 3 in affirmative.

As to point No. 4: -

16. I have answered points No.1 to 3 in affirmative. In answer to point No.4 and in the decision of application, I pass following order.

ORDER

1. The application is hereby allowed.
2. Defendant nos. 1 & 2 are hereby restrained from alienating or creating any third-party interest over suit properties till the disposal of the suit.
3. No order as to cost.

Sd/-

Date 01/03/2024.

(Sharad B. Kaldate)
2nd Jt.Civil Judge (Jr.Dn.),
Daund.

CERTIFICATE

I affirm that the contents of this PD.F file, Order are same, word to word, as per the original order.

Name of the Steno	:- Deepak A. Merukar, Grade-3
Court / Panel	:- (Sharad B. Kaldate) 2 nd Jt.Civil Judge (Jr.Dn.), Daund.
Order date	:- 01/03/2024
Order signed by the Presiding Officer on	:- 01/03/2024
Order uploaded on	:- 02/03/2024