IN THE COURT OF JOINT CIVIL JUDGE JUNIOR DIVISION, AT GHODEGAON, DISTRICT-PUNE

Plaintiff : Anantha Chima Lokhande

VERSUS

Defendants : Dattatray Chima Lokhande and Ors.

COMMON ORDER BELOW EXHIBIT 56 and 101
(Passed on 13/12/2017)

The application at Exhibit 56 is moved by the plaintiff [for short the plaintiff's application] praying that the payment of sugarcane produced from gut No. 780 and supplied to Vignahar Co-operative Sugar Factory Ltd, Nivrutti Nagar (Dhalewadi), Tal-Junnar, Dist-Pune [in short 'the Vignahar Factory'] shall not be disbursed to defendant No. 3 and 4. Per contra, the application at Exhibit 101 is moved by defendant No. 5 [for short the Defendant's application] for a direction to the Vignahar Factory that the payment of sugar produced from gut No. 1282 and supplied to them by the plaintiff shall not be disbursed to the plaintiff or any one on his behalf.

[2] It is the case of the plaintiff that Chima Mahadu Lokhande died in 1980. He was succeeded by the plaintiff and the defendants as heirs. There is a joint family of the plaintiff and defendant No. 1 to 5. The joint family property is not yet partitioned by metes and bounds. Land Gut No. 780 is the joint family property. The joint family had cultivated sugarcane in the said land. However, the sugarcane is sent to the Vignahar Factory only in the name of defendant No. 3 and 4 on 17/04/2016. If the payment is disbursed

to defendant No. 3 and 4 the plaintiff will suffer irreparable loss. The defendants filed their say at Exhibit 61 to the plaintiff's application. It is their contention that the plaintiff's application is false and filed to harass the defendants. The partition in respect of the joint family properties has been effected earlier. Out of Gut No. 780, 44.6 R land and entire Gut No. 1282 is in possession of the plaintiff in view of the partition effected earlier. The plaintiff is enjoying the fruits of the land in his possession on one hand and contending that the joint family properties are not partitioned. Hence, it is prayed that the application be rejected.

[3] In the defendants application, it is their case that the Vignahar Factory has cut and taken the sugarcane in land Gut No. 1282 from 25/02/2017 to 27/02/2017 without the consent of the defendants. It was told by the Vignahar Factory that they took the sugarcane as per the order of the Sugar Commissioner and it was recorded in the name of the plaintiff. According to the defendants, it is contended by the plaintiffs that the joint family properties are not yet partitioned. On the basis of this fact the plaintiffs has stopped the payment of defendants by taking advantage of the order of this Court below Exhibit 57. Therefore, by principle of equity and parity it is contended that the Vignahar Factory be directed to stop payment of the plaintiff. Per contra, the plaintiff resisted the defendant's application by filing say at Exhibit 119 on the ground that it is not maintainable. The plaintiff contended that he is in possession of Gat No. 1282. Defendant No. 5 has admitted the possession of the plaintiff. Hence, it is prayed that the application may be rejected.

[4] Heard the learned advocate Shri. M. V. Suryawanshi for the plaintiff and the learned advocate Shri. P. M. Pardeshi for the defendants.

[5] Perused the record of the case and the documents filed on record by the respective parties.

[6] The points for determination alongwith the findings and reasons thereon are as under-

Sr. No.	POINTS	FINDINGS
1.	Whether there is a prima facie case to direct the Vignahar Factory to withhold payment as prayed ?	**YES.**
2.	What order ?	**The applications at Exhibit 56 and 101 are allowed.**

REASONS

POINT NO. 1 and 2 :

[7] At the outset it is pertinent to note that the plaintiff had moved an application for interim injunction at Exhibit 5. It was rejected by my learned predecessor holding that the plaintiff failed to prove prima facie case. Being aggrieved by the said order, the plaintiff preferred an appeal in the Hon'ble District and Sessions Court, Khed-Rajgurunagar. In the appeal the defendants were restrained from alienating the suit properties i.e. land Gat No. 780 and 1282 to anyone and the appeal was partly allowed.

[8] The question involved in the present suit is about partition. According to the plaintiff the suit properties are joint. But

according to the defendants the joint properties are already partitioned. In order to support his contentions the plaintiff relied on the 7/12 extract of land Gut No. 780 and 1282 at Exhibit 3/1 and 3/2 respectively. On perusal of the said extracts it is amply clear that the names of both the plaintiff and the defendants are recorded in it. The said names are recorded in view of mutation entry number 186. On perusal of the said mutation entry No. 186 at Exhibit 27/1, it appears that the names of the plaintiff and the defendants came to be recorded to the suit properties as heirs of deceased Chima after his death in the year 1980. At this juncture it is worthy to note that in view of section 157 of the Maharashtra land Revenue Code there is presumption as to correctness of the entries in record of rights unless contrary is proved.

[9] In order to prove the contrary, the defendants contended that the partition in respect of the joint family properties is already effected. To support their contentions they relied on the photocopy of the alleged partition deed at Exhibit 37/20. They also relied on the 8A extracts of account No. 537 to 543 at Exhibit 37/2 to 37/8 respectively. According to the defendants, after the partition the accounts of each share holders were separated. On perusal of the said 8A account extracts at Exhibit 37/2 to 37/8 it can be seen that there is a separate account of each share holder i.e. the plaintiff and the defendants. Interestingly, it also reveals from the aforesaid account extracts that a partition might have been effected.

[10] 7/12 extracts and 8A account extracts are record of rights in view of the provisions of the Maharashtra land Revenue Code. Whenever any change is effected in the record of rights it has

to be supported by a mutation entry in that regard. In view of Rule 18 of the Maharashtra Land Revenue Record of Rights (Preparation and Maintenance) Rules, 1971 whenever an entry in the register of mutations is certified by procedure following under Rule 17, the said entry is to be taken into the record of rights alongwith the 8A account extracts. In the present case, the recording of names of the plaintiffs and defendants as heirs of deceased Chima is supported by mutation entry No. 186 (Exhibit 27/1). However, there is nothing to show how the accounts of each shareholder were separated. If the accounts were separated in view of the alleged partition deed, then why the 7/12 extracts were not separated till date is an unanswered question. In my opinion, the long standing revenue entries in the 7/12 extract supported by mutation entry No. 186 are more reliable than those in the 8A account extracts. Therefore, I have no hesitation to hold that prima facie there is sufficient evidence to hold that the joint family properties are not partitioned.

[11] Having said that, it is pertinent to note that all the co-shares in the joint property have equal right of enjoyment. As long as the joint family is in existence, all the coparceners jointly own all the properties. Each coparcener is a full owner of each property owned by the joint family. Now, in the plaintiff's application it is his contention that the entry of sugarcane in Gut No. 780 is taken only in the name of defendant No. 3 and 4. If the payment amount of sugarcane is disbursed to defendant No. 3 and 4 at this stage, then a question may arise at the end of trial about settlement of accounts. Similarly, land Gut No. 1282 is the joint family property prima facie. Although the defendants have admitted the possession of the plaintiff over it, the possession of the plaintiff is for all the co-

sharers. The plaintiff is seeking equity. It is a principle of equity that one who seeks equity must do equity. Further, in a suit for partition all the parties are plaintiffs. In view of the above facts, I am of the opinion that it will be just and proper to direct the Vignahar Factory to withhold the payments in respect of the sugarcane in land Gut No. 780 and 1282 till the disposal of the suit. At the time of disposal of the suit the accounts can be settled in view of the decision of the suit.

[12] In view of the above discussion, I am of the opinion that both the rival subject applications are liable to be allowed. Thus, point No. 1 is answered in the affirmative and to answer point No. 2 I pass following order-

ORDER

The applications at Exhibit 56 and 101 are allowed.

The Vignahar Co-operative Sugar Factory Ltd, Nivrutti Nagar (Dhalewadi), Tal-Junnar, Dist-Pune is hereby directed to withheld payment of sugarcane from land Gut No. 780 dated 17/04/2016 and land Gut No. 1282 for the year 2016-2017 till the final disposal of the suit.

A true copy of this order be sent to the Vignahar Co-operative Sugar Factory Ltd, Nivrutti Nagar (Dhalewadi), Tal-Junnar, Dist-Pune for information and necessary action.

Date : 13/12/2017 Bhanupratap Chouhan
Place : Ghodegaon Jt. Civil Judge Junior Division