

Spl.C.S.No.188/2019
Narmada vs Yashwant & Ors.

ORDER BELOW EXH.5.

01] The plaintiff has claimed a Temporary Injunction restraining defendant Nos. 1 and 2 and 4 to 10 from creating third party interest in the allotted leasehold plot No. 53 or changing its nature by way of construction or otherwise till disposal of the main suit.

02] In short, it is the case of plaintiff that the Gram Panchayat House Nos. 41 and 241 as well as open yard area admeasuring East-West 180 x 80 sq.ft. was originally owned and possessed by her deceased father Shantaram Shankar Patil @ Owalekar. He had purchased the said property along with others by a registered sale deed dated 11/11/1943 from the then predecessor-in-title. He died on 09/07/1979 leaving behind him his wife - Gangubai Shankar Owalekar and only two daughters i.e. Narmada Janu Shelke (the plaintiff) and Husabai Ganesh Vajekar (deceased defendant No. 3) as his only legal heirs and successors to inherit the properties left by him. Except them, there are no other legal heirs. The Mutation Entry No. 653 to that effect was also effected on 07/10/1983.

03] The agricultural properties subsequently acquired by

the State of Maharashtra under the development scheme of Navi Mumbai. However, Gangubai was withholding the house property initially coming under the then jurisdiction of Gram Panchayat, Ulve as her residential house which was numbered as House No. 41 along with the open area. She had been living there till her death.

04] Gangubai further died on 17/07/1991 leaving behind her the plaintiff and deceased Housabai (deceased defendant No. 3) as her only legal heirs and successors to inherit the agricultural property lying in her name. The Mutation Entry No. 4590 to that respect was also passed on 15/05/2007. In the meanwhile, Housabai also died. The plaintiff and the legal heirs of Housabai (defendant Nos. 3/1 to 3/4 herein) have obtained an Heirship Certificate dated 04/05/2011 under Misc. Civil Application No. 72/2010.

05] Defendant No. 1 is a completely stranger to the family of original ancestor Shantaram. However, he is posing himself to be one of the successors of ancestor Shantaram claiming through two more daughters of the deceased Shantaram and Gangubai namely Dharmubai Nagesh Waghe and Shanubai Nagesh Waghe. Not only this, he and his wife (defendant No.2) have filed Heirship proceedings bearing C.M.A. No. 267/2014 and C.M.A. No. 411/2017 for getting

himself and his wife - Manisha Yashwant Waghe (defendant No. 2) as the only legal heirs and successors of the deceased Shantaram and his deceased wife Gangubai in respect of House Nos. 41 and 241 respectively. After getting knowledge about the same, the plaintiff immediately took objections therein. Those proceedings are being still continuing.

06] As per the further case of plaintiff, defendant No. 1 by joining hands with the Gram Panchayat Targhar has succeeded to get entered his name in the record of Assessment of the House No. 41 and its open area in the place of deceased Gangubai posing himself as the only legal heir and successor to her. Not only this, he raised construction over the open area admeasuring 30 x 30 sq.ft. in the year 2011 and the constructed portion was entered in the name of his wife – defendant No. 2 in order to get the benefits under the scheme of 22.5% declared by the State of Maharashtra for the proposed International Airport which they subsequently got in the form of Award dated 03/03/2015 in that regard. The plaintiff had also raised objection at that time before the concerned authorities, however, the authorities did not take any cognizance into the matter.

07] The plaintiff further alternatively contended that even if defendant Nos. 1 and 2 succeeded to prove that their status as family members of deceased Shantaram representing

the interest of Dharmubai and Shanubai, the allegedly daughters of Shantaram, they have already released their interest by their implied conduct. Despite the aforesaid facts, the defendants have been illegally occupying the house properties and open yard area by illegally entering their names in the Assessment Record and also made further construction thereon in the year 2011 thereby adversely affecting the rights of plaintiff and the legal heirs of deceased Housabai. In that regard, she had already registered her objection in respect of the activities of defendant Nos. 1 and 2 with the concerned Gram Panchayat on 01/10/2014 in writing.

08] Not only this, the defendants have claimed all the benefits arising out of the acquired house properties i.e. House Nos. 41 and 241 for the purpose of International Development before the Special Land Acquisition Officer as the only affecting persons. The plaintiff on her part already registered her objection therein particularly on 11/11/2014.

09] The Special Land Acquisition Officer after verifying all documents of title and other materials placed by plaintiff was initially pleased to pass an order on 27/02/2015 expressing his opinion that the matter should be referred to the Civil Court under Section 30 of the Land Acquisition Act, 1894. However, the matter was not actually referred to the Civil Court and the

Special Land Acquisition Officer within two days therefrom directly passed the final Award on 03/03/2015 in favour of defendant Nos. 1 and 2 sheerly ignoring her own previous order and the pending claim of plaintiff. Not only this, the plot No. 53 was proposed to be allotted to defendant Nos. 1 and 2 in the Public Proclamation published on 02/03/2015 in the daily Newspaper 'Ram Prahar' one day before the passing of the award thereby showing illegality in her duty. The very act of Special Land Acquisition Officer is nothing but sheer violation of mandatory provisions of the Land Acquisition Act which cannot be recognized in the eye of law or non-est. Thus, the plaintiff has every right to invoke the inherent jurisdiction of this Civil court still rests with it (after exclusion of original jurisdiction) just to curb such activities unknown to the law.

10] The plaintiff lastly issued a Notice on 12/07/2018 calling upon defendant Nos. 1 and 2 from claiming the benefits illegally and also to the concerned authorities for setting right all the illegal things, However, neither of the defendants complied with the notice as called for thereby giving cause of action for the plaintiff to institute the present suit. The plaintiff has further expressed a great apprehension lying in her mind that the defendant Nos. 1 and 2 by taking benefit of Award and the allotment of plot No. 53, will change the complete nature of the suit plot No. 53 through any developer even before final

adjudication of the case in hand thereby further creating multiplicity of litigations. Not only this, defendant Nos. 1 and 2 have actually started construction thereon. The plaintiff lastly prayed for grant of application.

11] Defendant Nos. 1 and 2 have resisted the application by filing their Written Statement and Reply (Exh. 37). They have specifically denied the exclusive claim of plaintiff and the legal heirs of deceased Housabai (defendant No. 3/1 to 3/4) in respect of the House Properties bearing Gram Panchayat Nos. 41 and 241 or the benefits (compensation) arising out of the acquisition of the same in the form of allotment of leasehold developed plot No. 53, which is shown as the suit property.

12] Although the defendants have denied the claim of plaintiff, they have not denied the facts to the extent of holding agricultural properties and the Gram Panchayat House No. 41 along with its attached open area originally by deceased Shantaram (original ancestor) and then passing it to his wife by way of succession. They have also not denied that the plaintiff and deceased defendant No. 3 – Housabai were daughters of the ancestor Shantaram born from Gangubai. At the same time, they have denied the further contention that the deceased Shantaram and Gangubai had only two daughters as alleged. As per the case of defendants, the deceased Shantaram had in all four daughters

i.e. the plaintiff, deceased Housabai and two more daughters namely Dharmubai and Shanubai who happened to be mothers of defendant No.1. Defendant No. 1 is actually son of Dharmubai who died soon after his birth particularly on 17/03/1977. That is why the marriage of Shanubai, the sister of Dharmubai was performed with his the father namely Nagesh Waghe. As such, Shanubai was his step mother. Shanubai also further died on 23/01/1980. The father of defendant No. 1 also died on 05/01/2002.

13] The disputed Gram Panchayat House No. 41 was initially lying under the jurisdiction of Ulve Gram Panchayat having House bearing No. 315. Later on, it came under the territorial jurisdiction of Gram Panchayat, Targhar owing to change of boundaries of concerned Gram Panchayats. Gram Panchayat House No. 315 then changed to Gram Panchayat House No. 41 which is subject matter of suit.

14] As a matter of fact, the father of defendant No. 1 was residing in the house of Gangubai as her 'Ghar-Javai' (Son-in-law who stays at wife's house) since the date of his marriage. Defendant No. 1 born in the said house. He and his father had been taking due care of his mother-in-law Gangubai till her death. Gangubai was considering defendant No. 1 as her son. She died on 17/07/1991. Prior to that she had also given

intimation (worthy) to the concerned Gram Panchayat for mutating the only name of defendant No. 1 in order to avoid further complications from being raised on behalf of her other daughters. Accordingly, the name of defendant No. 1 in the Assessment Record entered in the year 1989. Since then, he had been paying house taxes and other charges except for the year 2007 when the plaintiff fraudulently succeeded to get entered her name along with Housabai and paid the taxes of that year only.

15] The plaintiff or deceased Housabai who was residing in the same village never took objection in respect of the mutation effected in the name of defendant No. 1 in the year 1989. Not only this, defendant No. 1 had already constructed house No. 241 by taking due permission of the Gram Panchayat. The said portion was recorded in the name of his wife - defendant No. 2. Although the plaintiff has alleged that she had already registered an objection in that regard by issuing Notice dated 14/02/2011 to the concerned Gram Panchayat or Block Development Officer, the said notices never acknowledged by the concerned authorities.

16] Above all, the plaintiff and deceased defendant No. 3 have expressly acknowledged the fact of having relationship of defendant No. 1 with the family of deceased Shantaram in

writing particularly on 10/04/2006 before the Executive Magistrate, Panvel while executing the Affidavits and Indemnity Bonds to be submitted in the office of CIDCO for getting the benefits arising of the earlier acquisition proceeding in respect of agricultural lands. Thus, the plaintiff is now estopped from denying the status of defendant No. 1 as one of the family members of deceased Shantaram.

17] The plaintiff though obtained one Heirship Certificate under M.C.A. No. 74/2000 but it was obtained suppressing names of other surviving legal heirs left by the deceased Dharmubai and deceased Shanubai. The effect of said Heirship Certificate was also restricted to the extent of other agricultural properties. It has no concern with either the House No. 41 or House No. 241.

18] The act of Special Acquisition Officer passing the Award in the name of defendant Nos. 1 and 2 in respect of House property Nos. 41 and 241 or entering the names of defendant Nos. 1 and 2 in the Assessment Record by the Gram Panchayat being part of their official duty cannot be challenged before the Civil Court. Even otherwise, the concerned authorities acted in accordance with law and looking at the factual aspect of exclusive occupation of defendant No. 1 and 2 since long continuously over there. Defendant Nos. 1 and 2 lastly prayed

for rejection of the application.

19] Defendant Nos. 4 to 6 have resisted the claim by filing Written Statement and Say (Exh. 34) as per their contention whatever acts done by them are in exercise of their official duties and the same cannot be challenged before the Civil Court. The name of defendant No. 1 was alone lying in the record since the year 1994-95 till 2006-2007. Thereafter, the names of plaintiff and deceased Housabai were entered in the year 2007 as against the house property. Likewise, the name of defendant No. 2 was entered in the Assessment Record since the year 2010-2011 which was continuing till acquisition of the suit property. They lastly prayed for rejection of application.

20] The suit is proceeded without Written Statement and Say against defendant Nos. 7 and 8 and Ex-parte against defendant Nos. 9 and 10 .

21] Heard both the sides and also gone through the documents on record. The points arise for my determination along with my findings thereon are as under :

<u>Sr. No.</u>	<u>ISSUES</u>	<u>Findings</u>
1	Whether the plaintiff has prima facie case ?	No.

2	Whether the balance of convenience tilts in her favour ?	No.
3	Whether the irreparable loss will be caused to her if the Temporary Injunction is refused ?	No.
4	What order ?	The application is rejected.

REASONS

AS TO POINT NO. 1 :

22] Before going into discussion of the real controversy between the parties, it will be just and proper to have regard to the admitted and undisputed facts in the case in hand. It is not disputed that the Gram Panchayat House No. 41 (Old Gram Panchayat House No. 315 at Ulve) and the open area attached thereto now situated in Targhar was originally owned and possessed by one deceased Shantaram Shankar Patil @ Owalekar, the father of plaintiff. Side by side, the deceased Shantaram was also having an undivided interest and one third share in other ancestral and undivided agricultural properties bearing Survey Nos. 2/1, 77/9, 83/5+6, 83/5+7, 324/6 and 325/4 along with his two brothers namely Chandar and Raghunath.

23] Shantaram died on 09/07/1979. After the death of

Shantaram, the disputed House No. 41 along with its open area was under occupation of his wife Gangubai and her name was also entered in the Assessment record of the Gram Panchayat. So far as the agricultural lands are concerned, they were recorded in the name of his wife Gangubai and only two surviving daughters namely the plaintiff and deceased Housabai (deceased defendant No. 3) as per Mutation Entry No.653. Gangubai further died on 17/07/1991. The name of plaintiff and deceased Housabai (then surviving) entered in the record of rights as per Mutation Entry No. 4590 in respect of the agricultural properties.

24] Subsequently, the undivided interest of Shantaram in other ancestral agricultural properties were acquired by the State of Maharashtra for the development of Navi Mumbai and also awarded the compensation to the concerned. As some dispute had arisen in respect of entitlement of benefits (compensation), the legal heirs of deceased brother Raghunath had filed one civil suit bearing Regular Civil Suit No. 110/1994 as against the plaintiff and deceased Housabai treating them as the only legal representatives of deceased Shantaram. It would not be out of place to mention here that House No. 41 was not forming part of the said proceeding. The said suit was further dismissed after hearing both the sides on 31/08/1996.

25] In the meanwhile, the name of defendant No. 1 was entered in the assessment record of the Gram Panchayat particularly in the year 1989. Subsequently, defendant No. 1 has made construction near the suit property. The construction permission seems to have obtained from the Gram Panchayat Targhar as per Resolution No. 25 particularly on 17/02/2011. As such, the said constructed portion was recorded in the name of his wife – defendant No. 2.

26] In the year 2007, the plaintiff has succeeded to get entered her own name and the name of deceased Housabai in the assessment record of House No. 41 as legal heirs of deceased Gangubai in existence of the name of defendant No. 1 on the basis of one undated Panchanama and the statement.

27] In the meanwhile, the plaintiff has issued a Notice on 06/01/2014 calling upon defendant Nos. 1, 2 and the Gram Panchayat Targhar (defendant No. 4) to completely remove the existing names of defendant Nos. 1 and 2 from the record of Gram Panchayat in respect of House Nos. 41 and 241 contending therein that they are complete stranger to the family of deceased Shantaram and deceased Gangubai and their names have been entered by playing fraud upon her. In fact, she and the legal heirs of deceased Housabai being the only legal heirs and successors of deceased Shantaram are the real owners of the

House Nos. 41 and 241 The said notice was duly replied by defendant Nos. 1 and 2 thereby denying the allegations therein by their Reply dated 23/01/2014.

28] It is also not disputed that House Nos. 41 and 241 have come under the acquisition process for the purpose of International Airport. The acquisition proceeding was also somewhere started in the year 2013-14 taking consent of defendant Nos. 1 and 2. After getting knowledge about the said process, the plaintiff has registered her objection with the Special Land Acquisition Officer particularly on 11/11/2014 with the similar contention as made in the earlier Notice dated 06/01/2014.

29] After taking into consideration the objection raised by the plaintiff and holding the inquiry, the Special Land Acquisition Officer has expressed her opinion in her Order dated 27/02/2015 that the apportionment of compensation (in the form of allotment of a developed leasehold plot) will have to be made through the interference of Civil Court by sending reference under section 30 of the Land Acquisition Act.

30] Although there was specific observation in existence about sending reference under section 30 of the Land Acquisition Act, the Special Land Acquisition Officer has finally

passed the Award in favor of defendant Nos. 1 and 2 on 03/03/2015 next after two days therefrom for the considerations known to her. Defendant Nos. 4 to 6 though in their Written Statement in para 5 have tried to justify the very act on behalf of the Acquisition Officer stating that the compensation is only given to the persons actually occupying the properties, the very act cannot be justified in the facts and circumstances in hand. Be that as it may, it is the fact that the Award is finally passed and all the compensation in the form of allotment of Plot No. 53 was given jointly to defendant No. 1 and 2 just keeping the objection open as it is.

31] The plaintiff then issued a Notice on 07/08/2018 calling upon the defendants not to claim any rights in the allotted plot and further develop the same. Similarly, the plaintiff has also issued Statutory Notices on 07/08/2018 and 15/02/2019 respectively thereby calling upon the concerned Gram Panchayat and the Collector, the Special Land Acquisition Officer etc. to set right all the alleged illegality committed by them in order to deprive the plaintiff from getting her lawful benefits arising out of the acquisition of the house property. Defendant Nos. 1 and 2 have given their Reply on 14/09/2018. However, the Special Land Acquisition Officer and the Concerned Gram Panchayat did not reply to the alleged Statutory Notices.

32] After having regard to the aforesaid admitted and undisputed facts, now I come to the real controversies between the parties. Defendant Nos. 1 and 2 have firstly raised objection as regards to existence of House No. 241 on the attached open area of House No. 41 for want of specific location and boundaries thereof. Although the defendants have specifically denied the existence of House No. 241 on the open area of the House Property No. 41 for want of proper description of property, the copies of the Assessment List relied by plaintiff filed at Serial Nos. 1/1 to 1/3 of the List (Exh. 3) prima facie show the existence of area admeasuring 80 x 120 ft. attached to the House No. 41.

33] The aforesaid documents are prima facie supporting the case of plaintiff on the point of existence of House No. 241 as part of House No. 41 though specific description of the House No. 241 are missing in the pleading. As such, the initial burden lying upon the plaintiff to prima facie prove the existence of open area or the courtyard as part of House No. 41 is clearly discharged.

34] As the plaintiff has discharged his prima facie and initial burden to prove existence of House No. 241 as part and parcel of House No. 41. It is now the onus shifts upon the defendants to prove that the existence of House No. 241 is an

independent one and it is not lying upon the said open area. However, they have not brought on record any independent material which would prima facie show that the said construction of House No. 241 was made on the different land by acquiring any independent title thereof. In absence of such independent material, the case of plaintiff that the House No. 241 was constructed only on the attached area of the ancestral House No. 41 seems to be more probable. Hence, the case of plaintiff on that point will have to be relied upon.

35] The plaintiff has come with the case that the deceased Shantaram and deceased Gangubai had only two daughters i.e. the plaintiff and deceased Housabai. As such, the plaintiff and the deceased Housabai survived through her children (defendant Nos. 3/1 to 3/4) are the only legal heirs and successors of deceased Shantaram and Gangubai to inherit and hold the disputed house properties left by them.

36] The plaintiff in order to substantiate his first and foremost contention that deceased Shantaram had only two daughters has relied upon the Mutation Entries Nos. 653 and 4590 in respect of the agricultural lands Survery Nos. 2/1, 77/9, 83/5+6, 83/5+7, 324/6 and 325/4 (already acquired) wherein the name of plaintiff and deceased Housabai being the only daughters of deceased Shantaram along with the wife of

deceased Shantaram were recorded. She has also relied upon the copy of Judgment in R.C.S.No. 110/1994 as already referred in admitted facts wherein also the plaintiff and deceased Housabai were treated as the only legal heirs and successors of deceased Shantaram.

37] Besides, the plaintiff has further relied upon the Heirship Certificate dated 04/05/2011 issued in their name under the proceeding bearing C.M.A. No. 72/2010. Thus, the aforesaid Mutation Entries, the copy of Judgment and the Heirship Certificate somewhat prima facie support the case of plaintiff that the plaintiff and deceased Hausabai are the only legal heirs and successors of deceased Shantaram and Gangubai as alleged.

38] Defendant No. 1 on the contrary has come with the specific case that the deceased Shantaram and deceased Gangubai had two more daughters namely Dharmubai and Shanubai besides the plaintiff and deceased Housabai. As per the case of defendant, the marriage of Dharmubai was solemnized with the father of defendant No. 1 – Nagesh Waghe. Soon after the marriage, he had started leading his matrimonial life in the suit house as 'Ghar-Javai' (Son-in-law who stays at wife's house) of deceased Gangubai. Defendant No. 1 also born in the said house out of their wedlock.

39] Unfortunately, Dharmubai died soon after birth of defendant No. 1. So, the marriage of second daughter - Shanubai of deceased Gangubai was performed with the father of defendant No. 1. As such, Dharmubai was the real mother of defendant No. 1 whereas Shanubai was his step mother. He has been residing in the house properties since his birth. His name was also entered in the Assessment record of the Gram Panchayat in the year 1989 and that too during lifetime of deceased Gangubai who subsequently died on 17/07/1991.

40] In order to support the aforesaid facts, he has placed on record the Leaving Certificate dated 08/06/1965 of his real mother – Dharmubai at Sr. No. 3 of the List (Exh. 41) wherein her father's name is shown as Shantaram Owalekar. He has also relied upon the death certificates of Dharmubai and step mother Shanubai at Sr. No. 4 and 5 of the List (Exh. 41). Particularly the name of mother of Shanubai is shown as Gangubai Shantaram Owalekar in death certificate of Shanubai Nagu Waghe. Moreover, the address of Dharmubai and Shanubai were shown at Targhar, Tal. Parnel in all the aforesaid certificates. He has further taken assistance of the Affidavits and Indemnity Bonds dated 10/04/2006 at Sr. No. 13 of the List (Exh. 41) submitted before the CIDCO Authority while getting the benefits of the scheme 12.5% as against the acquired

agricultural properties. The affidavits and indemnity bonds were sworn jointly by plaintiff, the deceased Housabai and defendant No. 1 particularly on 10/04/2006 before the Executive Magistrate in Tahsil Office, Panvel thereby indemnifying the State of Maharashtra and CIDCO Authority for any loss arising out of the allotment of a developed plot in the form of compensation and acknowledging the consequences of the breach of any of conditions of allotment.

41] The aforesaid documents are particularly showing the concern of defendant No. 1 along with the family of plaintiff although the plaintiff has denied the same. Not only this, one more Certificate dated 03/12/2013 issued by the Gram Panchayat, Targhar further certifies that deceased Shantaram has four daughters including Dharmubai and Shanubai. In this way, defendant Nos. 1 and 2 have rebutted the case of plaintiff that the deceased Shantaram and deceased Gangubai had only two daughters i.e. the plaintiff and deceased Housabai and further established the fact that two more daughters i.e. Dharmubai and Shanubai were also daughters of deceased Shantaram and Gangubai. Now the onus again shifts upon the plaintiff to rebut the said established fact.

42] The plaintiff on the contrary could not rebut the aforesaid fact prima facie proved by the defendants at this prima

facie stage nor could give any plausible explanation particularly in respect of the execution of affidavits and indemnity bonds along with defendant No. 1 except their bare denial in that regard. In absence of any contrary material on record to that effect, the existence and the nature of documents cannot be denied and discarded at this prima facie stage. Thus, those documents can be safely relied upon in support of the contrary contention made by defendant No. 1 in the matter.

43] If the documents replied by defendants are regarded, it would clear that the deceased Shantaram and deceased Gangubai in fact had two more daughters namely Dharmubai and Shanubai although their names did not find place either in Mutation Entries Nos. 653 and 4590 or in the Civil suit bearing RCS No. 110/1994 as relied by the plaintiff. The possibility of not finding their names in those record could be the cause of their death particularly on 17/03/1977 and 23/01/1980 respectively prior to coming into existence of those records as rightly contended by defendants. The Mutation Entries and the Civil Suit came into existence after 1980. By that time, Dharmubai and Shanubai were already died as can be gathered from their respective death certificates. As such, the aforesaid mutation entries and the court proceeding would not support the case of plaintiff on the point of the only legal heirs. Consequently, defendant Nos. 1 and 2 cannot be held as

complete strangers to the family of plaintiff as alleged.

44] The plaintiff in that regard has relied upon the case of Kamakshi Vs. Minor Ramlingam alias Manusami and another by judgment dated 12/01/1993 delivered in S.A. No. 920/1982 of the Hon'ble High Court of Judicature at Madras.

It has been held Section 16 of the Hindu Marriage Act regarding presumption of legitimate son cannot be invoked unless and until solemnization of marriage is duly proved. First of all, the question about the legitimate or illegitimate son as found in the aforesaid case-law is not involved in the case in hand. Besides, the defendant in the case in hand has clearly established that the Dharmubai and Shanubai, mothers of defendant No. 1 were daughters of deceased Shantaram and Gangubai. Thus, the aforesaid case-law cannot be made applicable to the case in hand.

45] Apart from the above, it is the alternative case of plaintiff herself as pleaded in plaint para Nos. 5 and 6 that defendant Nos. 1 or 2 had been residing in the House by mutating their names till passing of the disputed Award dated 03/03/2015. Admittedly, the plaintiff is residing separately at Panvel at her matrimonial home since her marriage. Similarly, the deceased Hausabai was also residing separately along with her husband Ganesh Wajekar in house at Mauje Belpada, Post

Jasai, Tal. Uran.

46] It is also the matter of fact that the suit property was always under continuous occupation of deceased Gangubai who survived till the year 1991. Defendant No. 1 was living along with her. Had it been really defendant No. 1 had no concern with the family of plaintiff, then why the plaintiff did not take objection about the residence of defendant No. 1 in the said house for the long time. No plausible reason is assigned by her in that regard. At least, she should have taken the charge or control of the house soon after the death of Gangubai, but that is also not so. Even, the pleading of plaintiff on that aspect is completely silent thereby indirectly supporting the case of defendant No. 1 as to his direct concern with the family of plaintiff and his exclusive control over the suit property since the lifetime of Gangubai. Hence, the contention of plaintiff that defendant No. 1 has no concern with the family of plaintiff will have to be discarded in the light of aforesaid discussion.

47] In view of the above discussion, I hold that defendant No. 1 is son of Dharmubai and Shanubai, the daughters of deceased Shantaram and Gangubai. He is legally entitled to represent the undivided interest and one fourth share each (total two-fourth) left by deceased Dharmubai and Gangubai in the house property or the benefits arising out of the

acquisition thereof whereas the plaintiff being one of daughters of deceased Shantaram will be entitled to claim her one-fourth share in the house property or the benefits arising out of the acquisition thereof. Likewise, defendant Nos. 3/1 to 3/4 being legal representative of deceased Housabai will be entitled to jointly claim one-fourth share in the house property or the benefits arising out of the acquisition thereof.

48] The plaintiff has alternatively come with the case that although defendant No. 1 is found to be legal representative of deceased Dharmubai and deceased Shanubai, he cannot claim any kind of interest in the suit property on the ground that his mothers namely the deceased Dharmubai and deceased Shanubai had impliedly released their undivided interest and share involved in the suit property in favor of plaintiff. The conduct of Dharmubai and Shanubai not challenging the Mutation Entries No. 653, 4590 and other proceedings bearing RCS No. 110/1994 appearing in the name of plaintiff and deceased Housabai only would support the case of plaintiff.

49] It is the matter of record, the aforesaid Mutation Entries and court proceeding were effected and taken place after the death of Dharmubai and Shanubai as discussed above. In that event, there is no reason for appearing their names in the said proceedings unless it is voluntarily pointed out by plaintiff

and Housabai. However, they have not done so for the reason known to them. In these circumstances, the contention as raised by plaintiff in that regard cannot be accepted. Even otherwise, the very contention being a question of fact is required to be proved by prima facie material which does not find place in the case in hand at least this stage. Hence, the said submissions cannot be taken into account only on the bare allegation of plaintiff. Hence, the alternative contention of plaintiff in that regard will have to be discarded as well.

50] Although the plaintiff has established that her undivided interest and one-fourth share is involved in the house property or the benefits (in the form of allotment of a developed plot) arising out of the acquisition thereof, she has not claimed the final reliefs in consonance with her limited rights. She has even not claimed her limited rights alternatively. On the contrary, she along with the legal heirs of Housabai has claimed the complete ownership over entire suit property excluding defendant No. 1. As such, the case of plaintiff cannot be said as prima facie case in the light of aforesaid circumstances.

51] Moreover, the person who comes before the court for an equitable relief must do equity first with other. He is required to come before the court with clean hands without suppressing or concealing anything from the court of law. In the case in

hand, the plaintiff has first of all denied the relationship of defendant No. 1 with her family which would otherwise amount to suppression of material fact. Moreover, she has also not disclosed the issuance of the Notice dated 06/01/2014, its Reply 23/01/2014 and also the Reply dated 14/09/2018 given by defendants to her Suit Notice dated 07/08/2018.

52] The plaintiff has also not taken immediate action in the matter soon after starting of construction in the year 2011 whereby the defendant has directly challenged the administrative control of plaintiff over the suit property by his act of construction. The plaintiff should have initiated the action at least from the receipt of the Reply dated 23/01/2014 to the Notice dated 06/01/2014. However, she did not act like a prudent man and slept over her right for considerable period of 4 years and above. Taking into consideration these aspects, the plaintiff will not be entitled for the equitable relief even otherwise.

53] So far as the contentions as regards to contradictory acts of the Special Land Acquisition Officer firstly passing the Order on 27/02/2015 thereby expressing view for referring the matter under section 30 of the Land Acquisition Act and then immediately passing the Award dated 03/03/2015 just contrary to the earlier view expressed in the order dated 27/02/2015

and also the act of publishing the allotment of suit plot to defendant Nos. 1 and 2 in the daily newspaper “Ram Prahar” dated 02/03/2015 one day before passing the final Award are concerned, the very issues though have some worth but the same cannot be entertained in this proceeding having regards to their nature in itself. The very acts challenged are directly touching part of the official duties of the Special Land Acquisition Officer working under the Land Acquisition Act. Thus, it cannot be challenged before the Civil Court either invoking its original or inherent jurisdiction as tried to say on behalf of plaintiff. In that respect, the defendants relied upon the case of **Laxmichand and Ors. Vs. Gram Panchayat Karanis and other, [AIR 1996, Supreme Court 523]** wherein it has been clearly held that the Land Acquisition Act in itself is a complete code and the jurisdiction of Civil Court is completely barred. Thus, the very case-law being applicable to the case in hand will have to be regarded.

54] Apart from the above, the plaintiff has made parties to the Government Authorities i.e. the Collector and Special Land Acquisition Officer and also sought certain reliefs against them. Although the notice as required under Section 80 of Code of Civil Procedure was issued by the plaintiff on 15/02/2019, the plaintiff has filed the suit on 01/04/2019 even before completion of the opportunity period as statutorily provided

therein. Even no previous Leave as required under section 80 (2) of the Code was obtained before institution of suit. However, she has subsequently and that too after conclusion of the arguments on the application (Exh.5) filed one application (Exh. 51) on record acknowledging the mistake or rather the correcting part on her side.

55] In that regard, the plaintiff has relied upon the case **Swapan Kumar Ganguly Vs. Smt. Smritikana Ganguly [AIR 2002 (Calcutta) 11]** wherein the exercise of taking express Leave is dispensed with looking at the existence of specific prayer lying in the plaint. In the case in hand, there is no such prayer forming part of the plaint in hand. As such, the very case-law cannot be made applicable to the case in hand for its different facts and circumstances. Besides, the application for Leave is already kept under consideration. It will be dealt with as and when the time comes. At this juncture, it is the fact that the plaintiff has not obtained the express leave as required.

56] Even if, it is presumed for the sake of argument that the compliance of seeking Leave is permitted at subsequent point in time as claimed, still the facts and circumstances of the case in hand do not permit the plaintiff to seek equitable interim relief. Consequently, the submissions made by the plaintiff in respect of provisions of law cannot be accepted.

57] Similarly, the plaintiff has claimed her right over the House property Nos. 41 and 241 even on the basis of entries entered in the name of her sister Housabai and her own name by way of undated panchanama which she has allegedly drawn by the Revenue Officer in presence of four Panchas namely Ganu Kanu Mhatre, Ganu Chandar Mokal, Pravin Ram Pargaonkar and Sujit Madhukar Mokal. On that basis one Tax Receipt was also issued on payment of tax for the year 2007 in favor of plaintiff. However, there is no other materials on record which would show that the concern Gram Panchayat Authority has given an opportunity of being heard to defendant No. 1 before entering names of plaintiff and deceased Housabai in the record of Assessment nor it is the case of plaintiff that such opportunity was given to defendant No.1. On the contrary, the four panchas namely Ganu Kanu Mhatre, Ganu Chandar Mokal, Pravin Ram Pargaonkar and Sujit Madhukar Mokal have given Letter to the Gram Panchayat on 16/12/2013 thereby conveying that they never stood as Panch for the alleged undated Panchanama thereby putting question about the act of Gram Panchayat entering names of plaintiff and deceased Housabai. Besides, defendant No. 1 is holding all the tax receipts from the year 1979 to 2015 except the year 2007 as can be gathered from the Receipts filed on record at Sr. No. 2 along with the List of Documents (Exh.41). This fact is directly or indirectly showing

that it the defendant No. 1 only who had been actually occupying the house properties till their acquisition.

58] Similarly, the plaintiff has also challenged the existing entries in the Assessment List maintained by the Gram Panchayat in respect of the names of defendants lying over House Property Nos. 41 and 241 thereby directly or indirectly challenged the official acts of the Gram Panchayat Authorities before this Civil Court which is not permissible in the eye of law because of express bar in that regard. Moreover, the very act of entering the name of any person treating him as occupant is only for fiscal purpose. It will not confer title upon any person which he is required to acquire by an independent source as provided under the Transfer of Properties Act, the Succession Act and other allied Acts. Furthermore, the very subject matter being purely internal part of the Maharashtra Village Panchayat Act, 1959 wherein other efficacious remedy in that regard is already provided therein. Thus, it cannot be challenged before the Civil Court invoking its jurisdiction either original or inherent, as the case may be.

59] As regards to specific objection raised by defendants pertaining to the limitation is concerned, the computation of period of limitation would start from the invasion upon the right of plaintiff or denial thereof. In the case in hand, I have already

held that the plaintiff has her undivided interest and one-fourth share in the house property or the benefits arising out of the acquisition thereof. The very interest being her matter of title cannot be extinguished unless and until the plaintiff releases or transfers the same. As such, the interest of plaintiff involved in the suit property is continuing one. Thus, the cause of action would arise at every time whenever such right is denied. As such, the cause of action in the case in hand will have to be treated as continuing one. Hence, the objection of defendant in that regard cannot be entertained at this stage. Even otherwise, the point of limitation involved in the case in hand is mixed question of law and facts which cannot be dealt with under this limited inquiry.

60] The cumulative effect of the aforesaid discussion leads me to hold that the plaintiff has failed to establish the prima facie case as required. Hence, I answer point No. 1 in the negative.

AS TO POINT NOS.2 AND 3 :

61] As stated above, since the plaintiff has failed to establish the prima facie case itself, there is no question of taking into consideration further grounds such as the balance of convenience and the irreparable loss. Even if, those aspects are considered on merit (presuming the established prima facie

case), it would disclose that it is the defendants (not the plaintiff) with whom the balance of convenience lies and who would suffer the irreparable loss having regard to their continuous long standing occupation and enjoyment of the old house property. In other words, they will entitle to further occupy the newly allotted plot as they would have been otherwise entitled for enjoying the old house property for further period had it not been already acquired. As such, they will entitle to enjoy the leasehold plot so long as the partition is effected by meets and bounds. Even if, any third party interest is created as apprehended by plaintiff, the subsequent purchaser will be bound by the final decree in the matter as per section 52 of the Transfer of Properties Act as he would not get any independent title therefrom unless and until the title of plaintiff is declared as extinguished. Hence, I answer point Nos. 2 and 3 in the negative.

AS TO POINT NO. 4 :

62] As the plaintiff has failed to establish all three essential ingredients required for grant of equitable relief, the temporary injunction will have to be refused by disallowing the application with costs. Needless to say, the running interim status-quo order granted earlier and continued from time to time stands vacated automatically with the disposal of this application. Hence, in answer to point No. 4, I pass the following

order.

ORDER

The application (Exh. 5) is rejected with costs.

Panvel.
Dt.06/07/2019

(U. L. Pathak)
3rd Jt. Civil Judge, Sr. Dn., Panvel.