

Spl.C.S.No.207/2019
Sindhubai vs Bharat & Ors.

ORDER BELOW EXH.5.

01] The plaintiff has claimed the Temporary Injunction restraining defendants from alienating the surviving suit properties Nos. 1 to 3 and 5 or creating third party interest thereon including parting with the possession thereof till disposal of the main suit.

02] In short, it is the case of plaintiff that the entire properties as described in plaint para No. 10 were originally held by one Krishna Ragho Chalke as protected tenant. He died on 25/07/1979 leaving behind him the wife Parvatibai, two sons namely Mukund and Dattatrey, two daughters namely Sindhubai (plaintiff) and Indumati (deceased defendant No. 6) as his only legal heirs and successors to jointly inherit the suit properties. Accordingly, the Mutation Entry No. 1190 entering the names of all legal heirs including the plaintiff were effected in the Record of Rights. As such, the plaintiff being one of legal heirs of deceased Krishna has her surviving undivided interest and share in the suit properties. In the meanwhile, the brother Dattatrey also died leaving behind him defendant Nos. 1 to 5 as his only legal heirs and successors. The sister Indumati - defendant No. 6 also died leaving behind her defendant Nos. 6/1 and 6/2 as her

only legal heirs and successors.

03] The plaintiff was under impression continuously that her name is lying in the Record of Rights. However, she surprisingly came to know for the first time only in the year 2017 that her name was missing from the Record of Rights. After making further enquiry, she came know the fact of passing one more Mutation Entry No. 1191 in the Record of Rights wherein the names of her mother Parvatibai, her sister – defendant no. 6 and her own were removed on the ground that they have voluntarily released their rights in favour of their brothers i.e. Dattatrey and Mukund just after 2-3 days of passing the earlier Mutation Entry No. 1190. Since then the names of Dattatrey and Mukund and their children have been lying in the Record of Rights.

04] The plaintiff soon after knowing the said fact, the plaintiff has challenged the impugned Mutation Entry No. 1191 before the Sub Divisional Officer, Panvel under RTS Appeal No. 20/2019. The Sub-Divisional Officer also pleased to set aside the said entry by passing order dated 05/04/2019. Not only this the said order was duly implemented reinstating the names of plaintiff and other. However, the Collector in R.O.R. Appeal No.48/2019 pleased to grant ad-interim stay to the said Order despite of having knowledge about its due implementation and

without giving the plaintiff of being heard although the caveat was duly registered with the said office. The plaintiff has further challenged the said order before the Upper Commissioner, Konkan Division, Mumbai. However, the request of vacating the impugned ad-interim stay order was refused by the Commissioner on 16/04/2019 by passing specific order and also put the said proceeding for hearing on the point of its maintainability.

05] As a matter of fact, the plaintiff or deceased defendant No. 6 never released their rights in the suit property before any Revenue Authority as described in the Mutation Entry No. 1191 or any other manner. On the contrary, it seems that the brothers of plaintiff have managed the impugned Mutation Entry on the basis of false inquiry by joining hands with the concerned Revenue Authorities. Moreover, the act of release of rights pertaining to immovable property having value of more than Rs. 100/- cannot be done unless there is a registered instrument to that effect. As such, the very transaction cannot be even recognized in the eye of law. Furthermore, the mere removal of name of plaintiff from the Record of Rights without there being any valid instrument does not itself extinguish the inherent right of plaintiff involved in the suit properties. As such, the right of plaintiff in the suit properties is still surviving. Although the defendants have already sold out certain properties

at their own risks and responsibilities, she has every right and authority to protect at least the surviving properties (leaving the properties at Serial Nos. 4, 6 and 7) till final adjudication of the dispute in hand. The plaintiff has further expressed her great apprehension that the defendants may further alienate the remaining suit properties at the costs of plaintiff's right. The plaintiff lastly prayed for grant of the application.

06] Defendant Nos. 1, 2 and 4 have resisted the claim by filing their Written Statement at Exh. 29 thereby specifically denying the claim of plaintiff. Although the defendants have denied the right and final claim of plaintiff in the suit properties, they have not disputed the relationship of plaintiff with them as claimed by the plaintiff. However, it is specifically denied that the plaintiff has any right still surviving in the suit properties. As per the case of defendants, the plaintiff and the deceased defendant No. 6 have voluntarily released their rights in the suit properties way back in the year 1979 in favour of their brothers - defendants out of their love and affection. At that time, the lands were also not fetching any worth value as found today. Moreover, there was no need to have registered instrument in that regard. Mere statement of family member before the Revenue Authority was sufficient to conclude and complete the transaction of release of undivided interest. The claim of plaintiff is also registered at very belated stage. The act of

plaintiff filing present suit is nothing but to extract certain amounts from the defendants looking at the spiraling run away prices of the suit properties. The defendants lastly prayed for rejection of the application.

07] Defendant Nos. 2 and 5 were duly served with the suit summons, but they did not appear in the matter. Hence, the suit is already proceeded ex-parte against them.

08] Heard both the sides and also gone through the documents on record filed by the rival parties. 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 :

09] Before proceeding with the real controversy between the parties, it will be just and proper to have regard with the admitted and undisputed facts. Admittedly, the entire suit properties were initially held by Krushna Ragho Chalke as protected tenant. He died leaving behind him his wife Parvatibai, two sons – Dattatrey and Mukund and two daughters - Sindhubai and Indumati. The names of all legal heirs including the plaintiff were also entered in the Record of Rights in respect of the suit properties as per Mutation Entry No. 1190. It is also matter of record that after two-three days one more Mutation Entry No. 1191 was effected in the Record of Rights thereby showing that the wife – Parvatibai, daughters – plaintiff and defendant No. 6 have released their right in the suit properties in favour of Dattatrey and Mukund by making statements before the concerned Revenue Authority.

10] In the meantime, the partition between the branches of Dattatrey and Mukund was effected as per Mutation Entry No. 1208. The names of their children entered in the record of rights in their place as per the terms of partition. The wife Parvatibai, son Dattatrey and the sister – Indumati also died. In

the meantime, some properties i.e. Sr. No. 4, 6 and 7 were sold out.

11] In the year 2017 for the first time after lapse of 37 years, the plaintiff has challenged the Mutation Entry No. 1191 before the Sub Divisional Officer, Panvel under RTS Appeal No. 20/2019. The Sub-Divisional Officer also pleased to set aside the said entry by passing order dated 05/04/2019. Not only this the said order was duly implemented reinstating the names of plaintiff and other. However, the Collector in R.O.R. Appeal No.48/2019 pleased to grant ad-interim stay to the said Order despite of having knowledge about its due implementation and without giving the plaintiff of being heard although the caveat was duly registered with the said office. The plaintiff has further challenged the said order before the Upper Commissioner, Konkan Division, Mumbai. However, the request of vacating the impugned ad-interim stay order was refused by the Commissioner on 16/04/2019 by passing specific order and also put the said proceeding for hearing on the point of its maintainability. The plaintiff then filed Writ Petition No. 6642/2019 before the Hon'ble Bombay High Court challenging the aforesaid order. However, the Hon'ble Court was pleased to dispose of the petition on 20/06/2019 granting liberty to the plaintiff for moving before the concerned Authority to get vacated the interim relief along with the hearing of the appeal.

12] Having regard to the aforesaid admitted and undisputed facts, now I turn to the fact in issue. If the main contention of plaintiff is taken into consideration, it would disclose that she has claimed her birth right lying in the suit properties after the death of her father Krushna Ragho Chalke as per Law of Succession which she claims to be still surviving. In order to show that the daughter has equal right along with the brothers by virtue of section 8 of Hindu Succession Act, she relied upon **Ramesh Verma (dead) through L.Rs. Vs. Lajesh Sexna (dead) by L.Rs. and Another, [2017 (3) Mh.L.J. 43]** wherein it has been held that the right of deceased coparcener operates where he left a daughter or any female as specified in Class I of Schedule as survivors even in the co-parcenary property and his share will be devolved upon the female heirs according to the Succession Act. In the case in hand, the entire suit properties were held by Krushna Ragho Chalke as Protected Tenant declared under the Tenancy Act. He has also obtained Certificate required under section 32-M of the Tenancy Act. As such, the entire suit properties were his self acquired properties. He died intestate. If this so, the properties left by him will equally devolve upon his wife, sons and daughters as per section 8 of the Hindu Succession Act. The wife - Parvatibai is already died. As such, two brothers and two daughters will have 1/4 undivided share each in the suit properties. As the sister -

Indumati (defendant No. 6) is also died, her respective 1/4 share is survived through her children i.e. defendant No. 6/1 and 6/2.

13] The aforesaid legal position of plaintiff is not disputed by the contesting defendants. As per their further contention, the right of plaintiff is completely extinguished way back in the year 1979 when she suo-moto and voluntarily released her interest in favor her brothers along with then surviving her mother Parvatibai and the sister Indumati before the Revenue Authority by making specific statements in that regard. As such, she is now estopped from claiming any kind of right in the suit property.

14] The defendants in support of their case have relied upon the Mutation Entry No. 1191 based upon the inquiry held therein including the act of recording of statement of plaintiff and others. No doubt, the said Mutation Entry was passed next after 2-3 days from the earlier Mutation Entry No. 1190. However, that itself is not sufficient to prima facie take doubt about the validity of the said Entry in absence of any material to the contrary. As such, the said Mutation Entry supported by the statement of plaintiff before the Revenue Authority is sufficient to prima facie establish that the plaintiff has released her interest in favor of her brothers along with others. If this is so, the right of plaintiff stands completely extinguished with the passing of

the said Mutation Entry.

15] The aforesaid Mutation Entry has also not been challenged for long and considerable period of 37 years. Even no plausible reason is assigned on behalf of the plaintiff for remaining silent for all these years. No doubt, she has taken the plea that she has recently come to know about existence of the said Entry. However, the said plea cannot be accepted at this stage only on the basis of her bare statement looking at huge gap of period in between. Moreover, the said aspect being mixed question of fact and law, it cannot be directly accepted at this stage in absence of any prima facie supporting material to it. Other legal heirs i.e. the wife - Parvatibai and Indumati – defendant No. 6 never challenged the said Entry during their life time. Not only this, the another Mutation Entry 1208 effected in the Record of Rights further discloses that the partition was already effected between the branches of Dattatrey and Mukund and they have been cultivating their lands came in their respective shares after the partition. Above all, some properties were already transferred in the meantime. In this backdrop, the contention of defendants that the plaintiff has voluntarily released her inherent interest in the suit property in favor of her brothers along with others seems to be more probable at this juncture.

16] The plaintiff has also tried to say that the creation or extinction of any right does not depend only upon the surviving entries in the revenue record. In support of the said contention she has relied upon **Pramod Moreshwar Tattu Vs. Sub Divisional Officer, Baramati and Ors. [2018(6) Mh.L.J. 785]**. It has been held that the right of person acquired by any source is an independent aspect and it has to be considered independently irrespective of surviving Mutation Entries lying in the revenue record. Having regard to the ratio laid down, true that the creation and extinction of right of a person does not depend upon the Mutation Entries but it depends upon the independent inquiry about source of its acquisition. However, the facts and circumstances in the case in hand do not permit to draw such inference in favour of plaintiff in the light of her own act of releasing her right in favour of her brothers and that too way back in the year 1979. Hence, the ratio laid down in the aforesaid case-law cannot be made applicable to the case in hand.

17] As against the prima facie established the aforesaid fact of release, the plaintiff has further come with the specific case that she has never released the such right before the Revenue Authority and the said entry is bogus or manipulated by joining hands with the Revenue Authorities. Even if, she has challenged the existence and validity of the said Entry, the said

aspect being the fact in issue cannot be dealt with at this juncture. It will have to be tested during course of trial. At this juncture, there is nothing on record to disbelieve the mutation entries lying in the Public Record. Hence, the very Mutation Entry can be relied upon supporting the case of defendants.

18] The plaintiff has further alternatively come with the case that even though the existence of impugned Mutation Entry No. 1191 is found in the record of rights, the said transaction is not effected on the basis of by any registered instrument as required for transfer of any immovable property having value of more than rupees hundred as provided under the India Registration Act. In that regard, she has also relied upon the case-law **Ghanshaym Sarada Vs. Sashikant Jha, Director, M/s. J.K. Kute Mills Co. Ltd. and Ors. [2017(3) Mh.L.J. 19]** wherein the contention of plaintiff as regards to transfer of immovable property having value of more than hundred rupees by registered instrument is supported. However, the subject matter of the aforesaid case-law was restricted to the transfer of tangible immovable property belonging to the company and not the ancestral property. In other words, the subject matter was not pertaining to the transaction of either release of undivided interest lying in immovable property either by sisters or other family members in Hindu Joint Family as found in case in hand or in the case of oral partition (without

executing any registered instrument); the concept of which is duly recognized in the eye of law. As such, the alternative contention of plaintiff that her right is still surviving in the suit properties for want of execution of registered instrument cannot be accepted. As such, the aforesaid case-law cannot be made applicable to the case in hand.

19] No doubt, the public proclamations in daily newspaper as subsequently filed by plaintiff at Sr. No. 2 along with the List of Documents (Exh. 35) show that the contesting defendants are intending to deal with the suit properties or part thereof, however, the plaintiff will get no authority to challenge the same consequent to her failure to establish the prima facie case. Even otherwise, the person seeking an equitable relief is required to be vigilant about his own right. In the case in hand, the plaintiff has come before the court for the protection of her right after a long period of 37 years. Thus, it is clear that she has slept over her right for considerable period. In that regard, the plaintiff has relied upon the cases - Mohinder Singh (deceased) by L.Rs. and another Vs. Kashmira Singh [AIR 1985 Punjab and Haryana 215], Harendra Chandra Nath and Ors. Vs. Bijoy Krishna Nath and Ors. [AIR 1992 Gauhati 52] and Daya Singh and Another Vs. Gurudev Singh (dead) by L.Rs. and Ors. [2010(2) All M.R. 461]. It has been held that the point of limitation when it is mixed with the question of fact,

the opportunity to prove the case will have to be extended to the plaintiff or the person taking such plea. However, the facts and circumstances as found in the case in hand are totally different. It is the plaintiff herself who has released her right in favour of her brothers along with other family members. As such, she is supposed to have prima facie knowledge about her own act. Thus, the ratio as laid down in the aforesaid case-laws cannot be made applicable to the case in hand. In this backdrop, the case of plaintiff even on the point of limitation cannot be said as prima facie one.

20] The plaintiff has also contended that the preservation and protection of the suit properties is essential for final adjudication when the plaintiff has made out a prima facie case. In support of the contention, she has relied upon **U.P. Co-operative Federation Ltd. Vs. Singh Consultants and Engineers (P) Ltd. [(1988) 1 Supreme Court Cases 174]**, **Harish Bulchand Tejwani Vs. Nandlal Hakikatrai Motwani [2015(6) Mh.L.J. 597]**, **Mrs. Vijay Srivastava Vs. Mirahul Enterprizes and Ors. [AIR 1988 Delhi 140]** and **Narottam Vs. Geetadevi and Ors. [AIR 2011 Rajasthan 60]**. It has been held that if the plaintiff makes out his some prima facie case which required to be tried, the suit property is required to be maintained as it is till the disposal of the main suit. However, the facts and circumstances in the case in hand are completely

different. In the case hand, the plaintiff has failed to make out her prima facie case. As such, the claimed restriction on the owners exercising their unfettered rights in respect of their own property by way of temporary injunction would amount unreasonable in the given facts and circumstances of the case in hand. Hence, the case-laws relied by plaintiff cannot be made applicable to the case in hand.

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

AS TO POINT NO. 2 & 3 :

22] As the plaintiff has failed to establish her prima facie case, the question of further consideration of the equitable grounds such as the balance of convenience and irreparable loss does not arise. Even otherwise, the other equitable grounds such as balance of convenience and irreparable loss will be lying in favour of contesting defendants as they were holding the properties since long as their own absolute property within their respective shares. Hence, I answer point Nos. 2 and 3 in the negative as well.

AS TO POINT NO. 4 :

23] 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. Hence, in answer to point No. 4, I pass the following order.

ORDER

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

Panvel.
Dt.03/08/2019

(U. L. Pathak)
3rd Jt. Civil Judge, Sr. Dn., Panvel.
03/08/2019