

ORDER BELOW EXH. 5 IN R.C.S. No.75 OF 2014

The plaintiffs have filed the present application to direct the defendants to give permission to carry on the necessary repairs of the suit property and to construct water closet besides the suit property.

2) The plaintiffs contended that plaintiff no. 2 is the mother of plaintiff no. 1. The suit property was owned by the grandfather of plaintiff no. 1 Sadashiv Balkrishna Khatu. After his death, the property came in to the hands of his wife namely Subhadra Sadashiv Khatu and the father of the plaintiff no. 1 namely Sudhakar Sadashiv Khatu. However after the death of Sudhakar Sadashiv Khatu on 31/12/1994 and the death of Subhadra Sadashiv Khatu on 30/06/1999, the property is owned by the plaintiffs.

The suit property is in a dilapidated condition and requires repairs every five to seven years. The plaintiffs and his family did the same in 1990 at their own expense. However in the year 1990, one Sharad Vishnu Khatu got his name mutated in the assessment extracts without the permission of the plaintiffs. The plaintiffs have never executed any transfer conveyance in the name of Sharad Vishnu Khatu.. But taking advantage of him being a Member of the Legislative Assembly, he mutated his name in the revenue record.

Sharad Vishnu Khatu is no way concerned with the suit property. He has mutated his name illegally in the revenue records. The plaintiffs resides at Mumbai and often come to reside in the suit property on festivals. Sharad Vishnu Khatu also used to

come to the suit property during festivals.

On knowing the fact that the name of Sharad Vishnu Khatu is mutated in the revenue record, the plaintiffs inquired about it to the defendants vide applications dated 17/08/2013 and 26/12/2013 and subsequently through reminders dated 13/01/2014 and 13/02/2014. However the defendants did not reply. On appeal to the Appellate Authority vide Right to Information Act, 2005, the defendants communicated to the plaintiffs that no documents are found in that regard.

The plaintiffs also made an application to the defendants on 20/12/2013 to permit them to construct a water closet besides the suit property. However on objection raised by Sharad Vishnu Khatu in that regard with the defendants, the defendants asked the plaintiffs to get the suit property demarcated in that behalf.

The plaintiffs sent a notice to the defendants thereafter through his Advocate to permit them to carry out the repairs and to construct a water closet besides the suit property. However they replied that they cannot do so except on the orders of their senior officials or the Court. The suit property is in need of repairs and there is a need of a water closet for the plaintiffs.

Hence prayed to mandate the defendants to permit them to do so.

3) The defendants opposed the application vide their say at Exh. 15. The defendants contended that the suit property was in the name of Sudhakar Sadashiv Khatu. However there is no record that the repairs in the suit property was carried out by him in the year 1990. The name of Sharad Vishnu Khatu appears in

the assessment list of the year 1990. No record appears as to its mutation. The defendants are ignorant of the fact that the plaintiffs come to reside in the suit property during festivals. The appeal bearing no. 24 of 2014 filed by the plaintiffs vide Right to Information Act was dismissed on 10/04/2014 since all the information was provided to the plaintiffs. The defendants have not received any application for construction of a water closet. On an objection raised by Sharad Vishnu Khatu for the same, the defendants have already intimated the plaintiffs to get the suit property demarcated. The plaintiffs never raised objection for the mutation of the name of Sharad Vishnu Khatu since last twenty years. The defendants are incapable to grant permission since an objection is raised by Sharad Vishnu Khatu.

Hence prayed for rejection of the application.

4) On rival contentions raised by the parties to the suit, following points arose for determination on which the findings are recorded with reasons as under:-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the plaintiffs has made out a prima facie case?	No
2)	Whether balance of convenience tilts in favour of the plaintiffs ?	No
3)	Whether the plaintiffs would suffer irreparable loss if injunction is refused?	No
4)	What order?	The application is rejected.

REASONS

As to point nos. 1 to 3 :

Since all the points are interlinked they are taken together for discussion to avoid repetition of evidence.

At the stage of deciding an application for temporary injunction, three parameters i.e. prima facie case, balance of convenience and irreparable loss are to be considered.

5) The plaintiffs have filed certain documents at Exh. 3. The name of father of plaintiff no. 1 Sadashiv Balkrishna Khatu appears on the tax receipts of the year 1990 issued by the Gampanchayat while the names of the plaintiff no. 2, Sharad Vishnu Khatu and his wife Gita Sharad Khatu appears on the tax receipts of the year 2013, 2014 and 2015.

From the perusal of the remaining documents, it is manifest that the plaintiffs had applied for deletion of the name of Sharad Vishnu Khatu and the reminders were sent to the defendants from time to time. The plaintiffs had also sought permission from the defendants to construct a water closet besides the suit property. However the defendants replied and expressed their inability to grant permission for the same vide their reply to the plaintiffs since Sharad Vishnu Khatu had raised an objection to do so.

6) The plaintiffs submitted that the name of Sharad Vishnu Khatu is wrongly mutated without any conveyance deed in his favour. The plaintiffs have filed the present suit for declaration

that the name of Sharad Vishnu Khatu is wrongly and illegally mutated and mandatory injunction. The plaintiffs further submitted that for the purpose of carrying out the repairs of the suit property, an interim mandatory injunction is necessary.

7) In C.Kunhammad v/s C.H.Ahamad Haji, AIR 2001 Ker. 101, it was held that

'The power to grant mandatory injunction must be attended with the greatest possible caution and is strictly confined to cases where the remedy of damage is inadequate for the purposes of justice and restoring the things to their former condition is the only remedy which will meet the requirements of the case. The Court will not interfere except in cases where there are extreme serious damage caused which cannot be compensated.'

8) In Dorab Cawasji Warden v/s Coomi Sarab Warden 1990 AIR 867, following guidelines were laid down while granting mandatory injunction:-

(i) The plaintiff must have a strong case for trial. It means the case shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(ii) It is necessary to prevent irreparable loss or injury which normally cannot be compensated in terms of money.

(iii) The balance of convenience is in favour of the one seeking such relief.

The relief of interlocutory mandatory injunction is granted generally to preserve or restore the status quo of the last non contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing to those acts that have been illegally done or the restoration of that which was wrongfully taken from the party

complaining. Granting of such interlocutory mandatory injunction to the party who would fail to establish his right at the trial may also cause injustice or irreparable loss to the party against whom it was granted.

9) In the present case, the plaintiffs has failed first hand to adhere and approach the appropriate forum for redressal of the relief. It is also settled law that interim mandatory injunction cannot be granted as a matter of course and the same can be granted only in exceptional cases. As also it is to be refused when it would amount to alike granting a decree while the trial itself has not commenced. The circumstances in the present case does not fall in the category of the exceptional circumstances.

In this eventuality, the plaintiffs have no prima facie case to obtain the equitable remedy as sought for. Undoubtedly the balance of convenience and irreparable loss also does not tilt in favour of the plaintiffs.

Hence finding to point nos. 1 to 3 are answered in the negative.

As to point no. 4:

In the background of reasons to finding to point nos. 1 to 3, the application is devoid of merits.

Accordingly, the following order is passed:-

ORDER

- 1) The application (Exh. 5) is hereby rejected.
- 2) Parties to bear their own costs.

Mahad.
Date:

(J.T. Koregaonkar)
Jt. C.J.J.D., Mahad.