

Mangesh Munde & ors.,
Vs. Rajaram Munde & ors.

ORDER BELOW EXH 05 IN REGULAR CIVIL SUIT NO. 82 OF 2017
(Decided on 23/11/2017)

The plaintiffs presented this application for granting temporary injunction restraining the defendants from building a construction in the suit property and changing the nature of the suit property. Perused the application, say and documents submitted along with it. Heard both the parties.

02. The plaintiffs submitted that the suit property is joint family property of them and the defendants. Their predecessors had share in the same. Father of the plaintiffs was allotted 21R land of the suit property and father of the defendants was allotted 14R land of the suit property by way of partition between them. After death of father of the defendants, name of the defendants was recorded to revenue record of the suit property. Sisters of the defendant Nos. 1 and 3 relinquished their share in the suit property in favor of the defendant Nos.1 and 3.

03. The plaintiff further submitted that the father of the plaintiffs Sitaram Dagadu Munde executed a will dated 21/09/2007. By that will the suit property was given to the share of the plaintiffs. The defendant No.1 was present at the time of execution of will. On the basis of that will the mutation entry No.762 was recorded and 21R area of the suit property was recorded to the name of the plaintiffs and 14R area of the suit property was recorded to the name of the defendants.

04. The plaintiff submitted that when the plaintiffs had gone

to Mumbai, the defendants started building a construction in 21R land of the plaintiffs. The plaintiffs asked the defendant to stop the constructions but the defendants continued with it. The defendants have no right in 21R land of the suit property but despite knowing this fact the defendants built a construction over it. Hence, the plaintiffs prayed for granting temporary injunction restraining the defendants from carrying out construction the suit property.

05. The defendant Nos.1 and 2 filed their say at Exh.20 and resisted the application. They contended that there is no partition took place between the plaintiffs and them. The defendant No.1 never signed upon a will executed by the father of the plaintiff. They contended that they had made an application to the Tahsildar Mangaon complaining about alleged partition between both the parties. The suit property has been in possession of the defendant No.1 since the year 1997. They contended that the construction in the suit property was already completed. They contended that they do not deny the share of the defendants in the suit property but they deny the partition of the suit property. Hence, they prayed for rejection of the application.

06. Considering above rival pleadings, following points arise for my consideration. I record my findings thereon as follows as,

Sr. No.	Points	FINDINGS
01.	Whether there is a prima facie case in favor of the plaintiff ?	:- In the Negative .

02. Whether there is a balance of convenience in favor of the plaintiff ? :- In the Negative.
03. Who will suffer irreparable loss if injunction is granted ? :- The defendant
04. What order ? :- As per final order.

REASONS

POINT NOS. 1 TO 3 :-

07. In order to prove prima facie case in their favour the plaintiff relied upon 7/12 extract of the suit property, the mutation entry Nos. 776, 808, 762, 350, the letter dated 06/06/2017 issued to the Gram Panchayat Talashet, the notice dated 13/06/2017 issued to the defendants, the notice dated 13/06/2017 issued to the Gram Panchayat Kashene, the Gut scheme map of the suit property etc. On the other hand the defendants produced on record 7/12 extract of the suit property, the letter dated 12/06/2017 issued to the Tahsildar etc.

08. I have gone through the documents produced on record. 7/12 extract of the suit property dated 05/04/2017 shows that out of 35R of the suit property 21R was shown in the name of the plaintiffs and 14R was shown in the name of the defendants. The mutation entry No.762 shows that the father of the plaintiffs Sitaram Munde through his will dated 21/09/2007 allotted his share in the suit property in the name of the plaintiffs. The mutation entry No.776 shows that on 29/05/2002 Rukmini Munde died and the name of defendants were recorded as her legal heirs. This entry shows that by

her death effect was given to the suit property. Mutation entry No.808 shows that the sisters of the defendant Nos. 1 and 3 relinquished their share in favour of these defendants. Mutation No. 350 shows that the defendants are legal heirs of Rama Dagadu Munde. This entry shows that effect was given to the suit property on death of Rama Dagadu Munde. Further, the plaintiffs produced on record the letter issued to Gram Panchayat Talashet asking them for cancellation of permission granted to the defendants.

09. The plaintiff produced on record the will of their father dated 21/09/2007. I have perused its copy. It shows that the father of the plaintiffs claimed in his will that 21R land of the suit property belongs to him. In his will he stated that after his death the said 21R land of the suit property was to be equally divided between the plaintiff Nos. 1 and 2.

10. The plaintiffs averred that the suit property is joint family property of them and the defendants. According to them there was partition between their father and father of the defendants. By that partition they came in to possession of 21R land of the suit property and the defendants came in to possession of 14R land of the suit property. I have perused all documents produced on record. The documents produced on record show that the father of the plaintiffs executed a will in the year 2007 and by that will he gave equal share of 21R land of the suit property to the plaintiffs. Further, mutation entries produced on record show the same fact mentioned in the will. The other mutation entries show how the defendants became legal heirs of Rama Munde. But from the record of mutation entries one fact has become clear that predecessors of the plaintiffs and the

defendants were real brothers and they had share in the suit property.

11. From the material produced on record it appears that there is nothing on record to show that there was partition of the suit property between the plaintiffs and the defendants. The plaintiffs can not claim partition of the suit property on the basis of the will of their father because the will itself is silent about how father of the plaintiffs came into possession of 21R land in the suit property of the suit property. Merely because he states that his share of 21R land to be distributed equally among the plaintiffs cannot be considered to determine the source of his claim of 21R land. The mutation entries produced on record nowhere show how the partition between the predecessors of both the parties took place. The mutation entry No.582 shows that the property was joint family property of the plaintiffs and the defendants but regarding partition and share of 21R and 14R the plaintiffs have not produced anything on record.

12. Further, the plaintiffs have not pleaded whether there was oral partition or registered partition between their predecessors and predecessors of the defendant. The plaintiffs produced on record the 7/12 extract of the suit property which shows 21R land recorded in the name of the plaintiffs and 14R land recorded in the name of defendants. This 7/12 extract was recorded on the basis of mutation entry No.808 and 762. I have earlier stated that this mutation entries nowhere show how the partition between the predecessors of both the parties took place. Therefore, I do not want to rely upon those mutation entries to consider the authenticity of 7/12 extract of the suit property. The plaintiffs produced on record gut scheme map of

the suit property which only shows the boundary of the suit property. Therefore, it is not helpful for the plaintiffs to prove their claim. Further, the plaintiffs produced on record letter issued to Gram Panchayat Talashet. This letter also does not show the ownership of the plaintiffs in 21R land of the suit property.

13. Considering above facts and circumstances I am of the opinion that the plaintiffs have not proved prima facie case in their favor as they failed to show their origin in ownership and possession of 21R land of the suit property. At this stage they failed to prove the partition of the suit property between their predecessors and predecessors of the defendants. Therefore, in absence of partition the plaintiffs can not ask for injunction against the defendants from building a construction in the suit property as they have equal right in the suit property. In brief the defendants are co-owners of the suit property. It is settled position of law that one co-owner can not ask injunction against another co-owner.

14. The prima facie case means there is strong case for trial in favor of the plaintiffs which needs investigation and decision on merits. There should be probability of the plaintiffs being entitled to the relief claimed by them. It is no part of the Courts function at this stage to try to resolve a conflict of evidence nor to decide complicated question of fact and of law which called for detail arguments and natural consideration. The plaintiffs have not produced material on record which shows prima facie case in their favor. Hence, in my point of view they are not entitled for equitable remedy of injunction.

14. If the application is allowed then the comparative

mischief, inconvenience and hardship will be caused to the defendants as they have incurred expenses for building a construction in the suit property, which can not be compensated in terms of money. Considering above factual position, I proceed to answer point Nos. 1 to 3 in the negative. In the circumstances I pass the following order,

ORDER

Application is rejected.

No costs.

Mangaon.

Date:- 23/11/2017

(G.S. Hange)

Jt. Civil Judge J.D. Mangaon.