



CNR No. MHSI070005032020
Order passed below Exh. No. 05
in R.C.S. No. 42/2020

The suit is filed for Declaration and Permanent injunction coupled with the present application under Order XXXIX, Rule 1 of the Code of Civil Procedure, 1908 [For short “CPC”].

BRIEF FACTS:

Plaintiff's case

2. The suit properties are ancestral properties of the plaintiff's forefathers. They were joint and common properties of the plaintiff's father and his co-sharer. Defendant No. 3 illegally got his name entered in the 7/12 extract without any right or title. On the basis of this illegal entry, defendant No. 3 sold the suit property to defendant No. 2 on 15.05.2020 and defendant No. 2 sold it to defendant No. 1 on 07.08.2020. Therefore, the sale deed executed by defendant No. 3 in favour of defendant No. 2 is illegal and void ab initio. As the first sale deed is void, defendant No. 2 acquired no title to the suit property. Consequently, the sale deed executed by defendant No. 2 in favour of defendant No. 1 is also illegal and void ab initio. As a result, defendant No. 1 has acquired no right, title, or interest in the suit property.

3. After the said sale deed dated 07.08.2020, defendant No. 1 is attempting to take possession of the suit property. The plaintiff has lawfully resisted such an attempt. Defendant No. 1

threatened the plaintiff with a false police complaint. On 13.10.2020, defendant No. 1 tried to measure the property. On the next day, he attempted to demolish the stone compound wall on the eastern side, measuring about 15 feet.

4. There are two 7/12 extracts bearing Survey No. 112 Hissa no. 46/1 and Survey No. 112 Hissa no. 46/2, but there is no division in the original revenue map. Survey No. 112 Hissa No. 46 is a single and undivided property. No partition has taken place between the plaintiff and the co-sharers. The only remedy available to defendant No. 1 is to seek a partition and separate possession of his share as per sale deed dated 07.08.2020. Until then defendant no.1 has no right to take possession of any part or portion of the suit properties. The plaintiff has a prima facie case. The balance of convenience is in his favour. He will suffer irreparable loss if injunction is refused. Hence, he prayed to allow the application.

Defendant No.1's case

5. The defendant has opposed the application by filing a reply at Exh. 23. The defendant has denied that the suit properties are ancestral properties of the plaintiff. Defendant No. 2 purchased 5.67 gunthas from defendant No. 3, who was the owner and in possession of suit property No. 1, by a registered sale deed dated 15.05.2020. Thereafter, defendant No. 1 purchased the same portion by a registered sale deed dated

07.08.2022 and took possession. The remaining portion of suit property No. 1 continues to be in possession of defendant No. 3.

6. Defendant No. 1 is already in lawful possession of 5.67 gunthas of suit property No. 1. There is no question of taking forcible possession by him. The plaintiff has no right to restrain defendant No. 1 from enjoying the purchased portion. When defendant No. 1 sought measurement through the revenue authorities, the plaintiff raised illegal objections and stopped the measurement. The plaintiff has no stone compound wall on suit property No. 1 and the said wall belongs to defendant No. 2.

7. The plaintiff has right only in suit property No. 2 and has no right or interest in suit property No. 1. Suit property Nos. 1 and 2 are separate and independent properties and no partition is required. The plaintiff has no right of pre-emption and no locus standi to seek relief in respect of suit property No. 1. The plaintiff has failed to show a prima facie case. The balance of convenience is in favour of defendant No. 1. No irreparable loss will be caused to the plaintiff if the application is rejected. Hence, he prayed to reject the application.

8. Heard the learned advocates for both the parties at length.

Argument by the plaintiff:

9. Mr. S. S. Gavankar, the learned advocate for the plaintiff, vehemently argued that the name of defendant No. 3 has

been illegally recorded in the 7/12 extract of suit property No. 1. Defendant No. 3 has no right, title, or interest in the suit property no.1. Therefore, he had no authority to transfer the suit property in favour of defendant No. 2. The sale deed executed between defendant No. 3 and defendant No. 2 is illegal and void ab initio. As a result, the sale deed executed by defendant No. 2 in favour of defendant No. 1 also conveys no title.

10. It was further argued that the suit property is joint and undivided property of the plaintiff's ancestors and co-sharers whose names appear in the 7/12 extract. Though separate 7/12 extracts exist for suit property Nos. 1 and 2, Survey No. 112 Hissa No. 46 is shown as a single property in the original revenue map. There is no division shown in the revenue record.

11. It was submitted that defendant No. 1 cannot take possession of any specific portion of the suit property. His only remedy is to file a suit for partition and seek separate possession. Until partition, defendant No. 1 has no right to interfere with the possession in suit properties. The defendant is attempting to take forcible possession. The plaintiff has a prima facie case. The balance of convenience is in his favour. The plaintiff will suffer irreparable loss if the application is rejected. Hence, submitted that the application may please be allowed. He relied upon following authority for his submissions, ***Ramdas v. Sitabai, (2009) 7 SCC 444***, wherein hon'ble Supreme Court held that a transferee who purchases an undivided share of a co-owner does not get exclusive possession of any specific portion of the

property. Such a purchaser only steps into the shoes of the transferor and acquires the right to joint possession and enjoyment. The proper remedy available to such a purchaser is to file a suit for partition and seek separate possession of the share purchased. Until partition takes place, exclusive possession of a defined portion cannot be claimed.

Argument by defendant No.1.

12. Mr. U. B. Kulkarni, learned advocate for the defendants, submitted that the plaintiff has no locus standi to file the present suit or the application in respect of suit property No. 1. Suit property Nos. 1 and 2 are distinct and separate properties. The name of the plaintiff does not appear in the 7x12 extract of suit property No. 1. The plaintiff has no right, title, or interest in suit property No. 1.

13. He further submitted that the sale deeds executed by defendant No. 3 in favour of defendant No. 2 and by defendant No. 2 in favour of defendant No. 1 are valid and legal. Defendant No. 1 is in lawful possession of the suit property. The property is not joint property. It is a separate property. Therefore, defendant No. 1 is not required to seek partition.

14. It was argued that the plaintiff has failed to make out a prima facie case. The balance of convenience lies in favour of the defendant. If the application is allowed, the defendant will

suffer loss which cannot be compensated in terms of money. Hence, the application be rejected.

15. Perused the record. Points for my determination along with findings and reasons thereon are as under :

Sr.No.	Points	Findings
1	Whether the plaintiff has made out a prima facie case ?	...No
2	Whether the plaintiff shows that balance of convenience lies in his favour ?	...No
3	Whether the plaintiff will suffer irreparable loss if injunction as prayed for is not granted ?	...No
4	What order ?	Application is reject.

REASONS

AS TO POINT NO. 1 to 4

16. I have given anxious thought to pleadings, documents and rival submissions advanced by both the parties at length. The present suit has been filed by the plaintiff seeking declaration and permanent injunction.

17. The plaintiff contends that the suit properties are neither partitioned nor independent. Though separate 7/12 extracts exist, there has been no division of the original Hissa No. 46. There is no separate revenue map for Hissa Nos. 46/1 and

46/2. The suit properties are ancestral properties of the plaintiff's forefathers along with other co-sharers.

18. It is submitted that, as the properties are joint and undivided, defendant No. 1 has no right to take possession of any specific portion of the suit properties. Defendant No. 1 can claim possession only after seeking partition on the basis of his sale deed. Therefore, it is necessary to examine whether Section 44 of the Transfer of Property Act, 1882, is attracted and whether the plaintiff has prima facie shown that the suit properties are joint and undivided properties of the plaintiff's forefathers and other co-sharers.

19. Section 44 of the Transfer of Property Act, 1882 provides that when a co-owner transfers his share in a joint and undivided property, the transferee steps into the shoes of the transferor and acquires only the right to joint possession and enjoyment of the property. Such transferee does not acquire the right to exclusive possession of any specific portion of the property unless there is a lawful partition. The proper remedy available to the transferee is to seek partition and separate possession of the share purchased. Until partition, the transferee cannot disturb the possession of other co-owners or claim exclusive possession of any defined part of the joint property.

20. A property can be joint in two ways. First, it may be joint family property in which each sharer is a coparcener. Second, it may be jointly purchased by two or more persons under a single sale deed. On perusal of the 7/12 extract (Exh. 6)

of suit property No. 1, the names of the Vadvalkar family, Gaonkar family, Bhogaonkar family, Kochrekar and Parab family, and Gudekar family are recorded. Similarly, on perusal of the 7/12 extract (Exh. 7) of suit property No. 2, the names of the plaintiff's Bhogaonkar family and the Dalal family are recorded. The name of the plaintiff's family does not appear along with the other persons recorded in the 7/12 extracts as members of an undivided Hindu family. Moreover, after the name of each family, the words “ सामाईक क्षेत्र /common area ” are distinctly mentioned in the 7/12 extract. This prima facie shows separate enjoyment by each family. Therefore, it does not prima facie appear that the plaintiff and the persons whose names are recorded in the 7/12 extracts of the suit properties constitute a Hindu undivided family.

21. It is also not prima facie shown that the suit properties were purchased through a single sale deed. Therefore, it cannot be treated as joint property on that basis. Therefore, suit property Nos. 1 and 2 cannot be treated either as joint family property or joint property purchased by a single transaction. To attract Section 44 of the Transfer of Property Act, the plaintiff must prima facie show that the property is joint family property or that it was purchased under a single sale deed which the plaintiff has prima facie failed to do so.

22. Prima facie, Section 44 of the Transfer of Property Act is not attracted in the present case. Therefore, there is no bar on defendant No. 1 for enjoying possession of suit property No. 1. Defendant No. 1 has a prima facie right to possession and

enjoyment of the portion of the property earlier held by defendant No. 2 and, prior thereto, by defendant No. 3. By virtue of the sale deed, defendant No. 1 steps into the shoes of defendant Nos. 2 and 3 and is entitled to possess that portion of the suit property.

23. The contention of the plaintiff that the sale deed is not valid and that defendant No. 1 has acquired no title to the suit property does not hold water at this stage. This issue requires a full dress trial. It is the plaintiff's case that defendant No. 3 illegally mutated his name in the 7/12 extract by claiming to be the legal representative of Govinda Laxman Gaonkar. The said mutation entry was effected in the year 2020. The plaintiff has not challenged the same before the revenue authorities till date. This also prima facie indicates that the plaintiff's family has no concern with the Gaonkar family whose name appears in the 7x12 extract of the suit property no.1.

24. To show that suit property Nos. 1 and 2 are not separate, the plaintiff has filed affidavits (Exh. 13 to 15 and 34 to 37). As discussed above, Section 44 of the Transfer of Property Act is not attracted in the present case. Therefore, even if it is assumed that the suit properties are not separate, defendant No. 1 is not required to seek partition before claiming possession. At the costs of repetition prima facie by virtue of the sale deed, defendant No. 1 steps into the shoes of defendant Nos. 2 and 3 and is entitled to possess that portion of the suit property. On perusal of the affidavits filed at Exh.13 to 15, it is nowhere stated by the deponents that all the families mentioned in the 7/12

extracts of the suit properties are jointly cultivating the land and jointly sharing the income. Hence, at this stage, the affidavits do not support the plaintiff's case.

25. I have read the authority quoted by the plaintiff. The ratio in ***Ramdas (supra)*** applies only where the property is joint and undivided, and where the transferor is merely a co-owner having an undivided share. In such cases, the transferee gets only joint possession and must seek partition. In the present case, the plaintiff has failed to prima facie establish that suit property Nos. 1 and 2 are joint family property or joint property purchased under a single sale deed. The 7/12 extracts show separate enjoyment by different families and there is no material to show a Hindu undivided family or joint cultivation. Hence the ratio in ***Ramdas (supra)*** is not applicable to the case in hand.

26. From the above discussion, the plaintiff has failed to establish a prima facie case. As the plaintiff has not shown a prima facie case, the balance of convenience does not lie in his favour. Moreover defendant no.1 on the basis of sale deed is prima facie entitled to enter the shoes of defendant nos. 2 and 3 and enjoy possession of the suit property which they possessed. Therefore, no irreparable loss or injury will be caused to the plaintiff if the application is rejected. In these circumstances, the application is liable to be rejected. Hence, Point Nos. 1 to 3 are answered in the negative. As to Point No. 4, the following order is passed,

ORDER	
1	The application (Exh.5) is rejected.
2	cost in cause.
	(Pronounced and dictated in open Court.)

Sd/-

Place: Malvan
Date: 13/02/2026(M.K. Fakihi)
Civil Judge (J.D.), Malvan.