



ORDER BELOW EXH. 20 IN R.C.S. NO. 52/2022
CNR-No-MH-SI-08-000353-2022

01. The plaintiffs have filed this application for continuation of status quo against defendant No.1.

02. **The plaintiff's case in brief as follows:-**

It is the case of the plaintiffs that, the registered sale deed dated 01/01/2016 has executed between defendant No. 2 and defendant Nos. 3 to 16 also registered sale deed dated 10/02/2022 has executed between defendant Nos. 1 and 2. Both these sale deeds in respect of the suit properties are false, frivolous and illegal and not binding on the plaintiffs. Hence prayed for declaration and permanent injunction against defendants. It is further contended by the plaintiffs that, the name of the defendant Nos. 1 and 2 have recorded to 7x12 extracts of the suit property but plaintiffs are in actual possession of the suit property. According to plaintiffs, defendants have cheated the plaintiffs and executed the registered sale deed without their consent. According to plaintiffs, the defendant No. 1 has started unauthorised construction on the suit property. The said construction is illegal and without permission of the Grampanchayat. The Grampanchayat, Shirval, Taluka Kankavali has given notice dated 02/05/2022 to defendant No. 1. Instead of this defendant No. 1 has started unauthorised construction on the suit property. If defendant No. 1 will continue the said construction then the main purpose of the suit will be defeated. There is a prima facie case and balance of convenience is in favour of plaintiffs. Hence prayed for continuation of status quo granted till final decision of Exh. 5.

3. The defendant No. 1 appeared and filed his say vide Exh. 31. She denied all the contents in the application. According to her, the suit bearing No. 260/1949 was filed for partition of suit property and other properties. In that suit there were 108 defendants. In that suit 516 Hectre landed properties situated at village Shirval was included. In that suit, the predecessor of the plaintiffs and predecessor of defendant Nos. 3 to 16 were included as a parties and other cosharers of Sawant family were parties in that suit. That suit was decided on 27/02/1956 and accordingly the shares of plaintiffs and defendants have decided. Nobody had challenged the said partition decree by filing the appeal. Thereafter, predecessors of defendant Nos. 3 to 16 had filed Regular Darkhast bearing No. 14/1999 for execution of the partition as per the partition decree in R.C.S. No. 260/1949. In that darkhast the precept of the said partition matter was forwarded to the District Collector, Sindhudurg as per Section 54 of the C.P.C. and according to the judgment passed in Annasaheb Nagane Vs. Rajaram Nagane (2001(3) Maharashtra Law Journal Page No. 53) of Hon'ble Bombay High Court and further the said matter was forwarded for the partition to the Tahasildar and thereafter to the T.I.L.R. for actual partition. Accordingly the actual partition took place by following the legal procedures and sending notices to all the parties and by publishing the notice and prepared actual partition sheet. (वाटप तक्ता). Against the said partition sheet some of the co-sharers had filed partition appeal No. 1/2004 in Sub Division Office, Kankavali. In that matter the said partition matter was remanded for repartition to the T.I.L.R. Kankavali and according to the direction given by the Sub Division Officer, T.I.L.R., completed the partition and prepared the final partition sheet and send it to Tahasildar, Kankavali for sanction and accordingly the Tahasildar, Kankavali sanctioned the final partition sheet and as per the said partition sheet

the possession were given to the co-sharers. The original decree holder that is defendant Nos. 3 to 16 in the present matter were given possession of the landed properties of their shares on 15/03/2008 by the Tahasildar, Kankavali and the possession receipt for actual possession was given by defendant Nos. 3 to 16 and their predecessor. On that receipt the Tahasildar, Circle Officer, Kankavali and Panch Vijay Shirvalkar and Vishaka Tabe have signed on it. From that time defendant Nos. 3 to 16 were in possession of the landed properties.

4. The suit property i.e. Survey No.312/1, Area 8-40-00, is belonging to defendant Nos. 3 to 16 as per partition. As per possession receipt, Gavkamgarpatrak has prepared and 7x12 extracts of said properties are registered in the name of defendant Nos. 3 to 16. Hence defendant Nos. 3 to 16 became absolute owner since date of possession receipt i.e. 15/03/2008.

5. Defendant No. 2 wanted to purchase the landed properties and defendant Nos. 3 to 16 needed money hence, he contacted with defendant Nos. 3 to 16 and requested to purchase the said landed properties and admitted to sale 2 Hecter area out of Survey No. 312/1. Thereafter, defendant No. 2 purchased the 2 Hecter area out of said property (Survey No. 312/1) by executing registered sale deed dated 30/12/2015 from defendant Nos. 3 to 16 for Rs. 1,25,000/- and took possession of it. The said sale deed is legal and by the said sale deed the defendant No. 2 became absolute owner of the suit property and in possession of suit property. After defendant No.2, Rohini Amol Samant, Aparna Anil Samant and Narayan Raghoji Rane have purchased the 2 H.R. area, 0-80-0 H.R. area and 4 H.R. area out of suit property i.e. Survey No. 312/1 by executing registered sale deed from defendant Nos. 3 to 16 and they also became owner and possessor of the said

properties on the application of defendant No. 2, original survey No. 312/1 was divided and amended Akarphodpatrak No. 2/2018 has prepared. The name of defendant No. 2 was registered to 7x12 extract of 2 Hecter area and to the map and 7x12 extracts of maps of other purchasers of landed properties were also prepared.

6. After executing sale deed defendant No. 2 filed his application before Talathi for registering his name to 7x12 extract of suit property and as per that application mutation entry No. 1296 at village Shiraval was entered. The plaintiff No. 2 and other co-sharers have objected the said mutation entry and the matter was conducted for hearing before Circle Officer who rejected the said objection and granted mutation entry No. 1296 at village Shirval by order dated 02/06/2016 and ordered to register the name of defendant No. 2 to 7x12 extract. Against this order, plaintiffs have not filed any appeal. Hence the order passed by Circle Officer remained as confirmed.

7. Thereafter, plaintiff Nos. 1 and 2 and other co-sharers, have filed suit bearing Regular Civil Suit No. 20/2019 in Civil Court Senior Division. In that suit, the said suit properties was included and defendant No. 2 was intentionally not included in that suit and also not challenged sale deed dated 04/01/2016. Plaintiffs have objected said registered sale deed on 19/04/2016 and thereafter they did not object it within 3 years and hence plaintiffs suit is not within limitation.

8. The defendant No. 2 became absolute owner and possessor of the suit property. In February 2022 defendant No. 2 sold the 0-94 H.R. area out of suit property to defendant No. 1 by executing registered sale deed dated 10/02/2022 for Rs. 8,00,000/- and gave its possession. Accordingly, name of defendant No. 1 registered to mutation

entry and to 7x12 extracts. Defendant No. 1 is public servant and she wanted to cultivate the properties by farming and planting trees. Hence she started constructing cement pole and wire fencing around 0.94 H.R. through Sandip Prabhu Tendulkar from 28/03/2022. But plaintiff and other persons destroyed cement pole in her absence on 02/04/2022. She accordingly filed complaint in Kankavali police station. She started construction of farm house. Plaintiffs have threatened to defendant No. 2 and restrained them from doing construction accordingly defendant No. 2 filed complaint in Kankavali police station on 09/03/2022. In order to stop the construction and to trouble the defendant No. 1, plaintiff has filed the present suit and T.I. application. The plaintiffs have no concern with the suit property. If status quo would continue, then defendant No. 1 will suffer a loss and it will be difficult for her to cultivate her suit property. The prima facie case and balance of convenience lies in her favour.

9. Defendant No. 1 is purchaser of defendant No. 2. Plaintiff has sought status quo order on Exh. 20 by misleading the Court and in absence of defendant No. 2 and sought ex parte order of status quo. Hence prayed for vacating status quo order passed below Exh. 20 and prayed for rejecting the application.

10. Heard advocate for the plaintiffs Shri. S.K. Marathe and Advocate for the defendant No. 1 Shri. U.S. Sawant.

11. In order to support of their contentions, the Plaintiff's have filed on record the documents vide Exh. 4 including 7x12 extract suit property at Exh. 6, Copy of Registered sale deed No. 3/2016 dated 01/01/2016 between defendant No. 2 and defendant Nos. 3 to 16 (Exh.4/2), copy of Registered sale deed No. 263/2022 dated 10/02/2022

between defendant No. 2 & defendant No. 1 (Exh. 4/3), copy of suit bearing Regular Civil Suit No. 20/2019 at Exh. 4/4, copy of public notice (Exh. 4/5), copy of judgment in Regular Civil Suit No. 260/1949 (Exh.4/6), copy of decree in Regular Civil Suit No. 260/1949 (Exh. 4/7), copy of Exh.1 in redemption suit bearing No. 92/1951 at (Exh. 4/8), copy of judgment in R.D. No. 14/1999 (Exh. 4/9), copy of Roznama in Regular Darkhast No. 14/1999 (Exh. 4/10), copy of notice sent by Grampanchayat Shirval dated 02/05/2022 at Exh. 19/1, photos of suit property at Exh. 19/2, Death certificate of Chandrakant Pandurang Sawant (Exh.42/1), Possession Receipt (Exh. 42/3), Affidavits of plaintiffs witnesses vide Exh 43. to 60.

12. In support of her contention, defendant No. 1 filed document vide Exh. 39 including zerox copy of sanction order to partition sheet by Tahasildar dated 25/03/2018 at Exh. 39/1, zerox copy of final partition sheet (Exh. 39/2), zerox copy of possession receipt dated 15/03/2008 (Exh.39/3), zerox copy of Gav Kamgar Patrak, issued by T.I.L.R. (Exh. 39/4), zerox copy of order of Circle Inspector in M.E. 1296 to 1299 dated 02/06/2016 (Exh. 39/5), zerox copy of objection application to Talathi (Exh. 39/6), complaint application by defendant No. 2 to P.I. of Kankavli police station dated 09/03/2022 (Exh. 39/7), complaint application by defendant No.1 to P.I. of Kankavali police station dated 04/04/2022 (EXh.39/8), zerox copy of notice given by Grampanchayat, Shirval to defendant No. 1 dated 02/05/2022 (Exh. 39/9), reply to notice given by defendant No. 1 to Grampanchayat, Shirwal (Exh. 39/10), report of service of notice in Regular Civil Suit No. 260/1949 by Talathi (Exh. 39/11), Zerox copy of Repartition report in Regular Darkhast No. 14/99 (Exh. 39/12), zerox copy of application for certified copies of Exh. 443 & 446 in Regular Civil Suit No. 260/1999 (Exh. 39/13), its affidavit (Exh. 39/14), zerox copy of letter issued by Civil

Court Kankavli to Sub Division Officer, Kankavali dated 27/06/2007 (Exh. 39/15), application by Eknath Sawant to Forest Officer (Exh. 39/16), complaint letter to P.I., Kankavli by Madhukar Sawant (Exh. 39/17), Zerox copy of permission application to Grampanchayat, Shirwal (Exh. 39/18), affidavit of Sandip Prabhu Tendolkar (Exh. 39/19).

13. Heard. It is argued by Ld. Advocate for the plaintiffs Shri S.K. Marathe that suit for partition bearing Regular Civil Suit No. 260/1949 was filed between plaintiffs predecessors and their other co-sharers in respect of suit properties and other properties. Plaintiffs have not received possession of their shares as per partition sheet. They challenged the sale deeds executed between defendant No.2 and defendant Nos. 3 to 16 and defendant Nos. 1 and 2. Plaintiffs are in actual possession of suit properties. Defendant No. 1 is not a bonafide purchaser of that land. She is doing illegal construction on the suit property. According to the plaintiffs, defendant No. 1 will forcefully grab possession. If application is rejected, then all then plaintiffs will suffer irreparable loss. If application is not allowed, then suit purpose would become infructuous. Hence prayed for continuation of status quo order.

14. Advocate for defendant No. 1 Shri U. S. Sawant argued that plaintiffs have not stated anywhere that how they are connected with Regular Civil Suit No. 260/1949, Plaintiffs have no locus standi. As per partition sheet, the possession was handed over to defendant Nos. 3 to 16 about Survey No. 312/1 Plaintiffs have not produced on record any document showing their possession. As per possession receipts, the possession of suit property was given to predecessors of defendant Nos. 3 to 16 on 15/03/2008. Possession receipt (ताबेपावती) is a document and accordingly possession of suit property was handed over

to predecessor of defendant Nos. 3 to 16. As per Gav Kamgar patrak, the names of defendant Nos. 3 to 16 were registered to 7/12 extracts of suit property. Plaintiff's have not challenged the said order of Tahasildar or said Partition sheet. Hence they remained intact and unshakable. Plaintiffs have not stated that partition sheet is illegal. There is no prima facie case and irreparable loss in favour of plaintiffs. The defendant No. 1 has invested in construction of farmhouse. Hence prayed for vacating Status quo and rejecting application at Exh. 20.

15. He relied on -

1. **Annasaheb Rajaram Nagane and another vs Rajaram Maruti Nagane and others (2001 (supp.2) Bom .C.R.872 of Hon'ble Bombay High Court**

Para 24- The narration of facts extracted hereinabove unequivocally demonstrate that the decree in question was preliminary with respect to the lands assessable to revenue, all further proceedings were required to be taken before the Collector or any Gazetted Officer subordinate to him, to whom the powers were delegated by the Collector as per section 54 read with Order 20, Rule 18 of Civil Procedure Code. When matter goes before the Collector, he has to pass final decree by coming to the conclusion, how the land should be partitioned between the parties and then he has to execute the decree actually by putting the parties in possession of the respective portion allotted to them. The Civil Court has no say in the matter as to how the land is to be partitioned between the parties, so as to say, for preparing final decree. So, it was obligatory on the part of the Civil Court to transfer papers to the Collector for effecting partition as per declaration made in the judgment. All further proceedings with respect to such decree are required to be taken up by and before the Collector. As a matter of fact, it was not necessary for the applicants/decreed holders to move or make any application to the Court

to sent the decree to the Collector. It was a duty of the Court to send necessary papers to the Collector as per the directions given in the decree itself. An application, even if made in the form of darkhast application with a prayer to send decree and papers to the Collector, was not an application in execution. It did not attract provisions of Limitation Act. At no point of time executable final decree took birth, so as to attract the provisions of Limitation Act. Therefore, the impugned order passed by the executing Court holding that the execution application was barred by limitation is bad and illegal and suffers from material illegality and irregularity, as such, the same is liable to be quashed and set aside.

2. **Ayaaubkhan Noorkhan Pathan vs State of Maharashtra and others (2012 (DGLS (SC) 599) of Hon'ble Supreme Court**

Para 31- Affidavit- whether evidence within the meaning of Section 3 of the Evidence Act, 1872. It is a settled legal proposition that an affidavit is not evidence within the meaning of Section 3 of the Indian Evidence Act, 1872 (hereinafter referred to as the Evidence Act). Affidavits are therefore, not included within the purview of the definition of evidence as has been given in Section 3 of the Evidence Act, and the same can be used as evidence only if, for sufficient reasons, the Court passes an order under Order XIX of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC). Thus, the filing of an affidavit of ones own statement, in ones own favour, cannot be regarded as sufficient evidence for any Court or Tribunal, on the basis of which it can come to a conclusion as regards a particular fact situation.

16. Advocate for the plaintiffs replied that plaintiff have interest in the suit as their predecessors have filed earlier suit bearing Regular Civil Suit No. 260/1949 and plaintiffs have locus standi. In order to avoid

multiplicity of proceeding, prayed for allowing and continuation of status quo order passed below Exh. 20.

17. Heard both the sides. Injunction is an equitable relief. The person who does the equity only can expect the equity from otherside as well as from the Court. For issuing injunction order, one has to prove prima facie case, balance of convenience and irreparable loss. In the present case, plaintiffs have filed T.I. application at Exh. 5 against defendant Nos. 1 and 2 wherein I issued show cause notices to defendant Nos. 1 and 2. In meantime, the plaintiffs filed the present application for granting status quo only against defendant No. 1 in which status quo was granted till appearance and filing of say of defendant No. 1. The defendant Nos. 1 and 2 appeared and filed their say. Perused the documents filed on record. After perusal of 7/12 extracts of the suit property (Exh. 6), it prima facie appears that name of defendant No. 1 and defendant No. 2 are shown in the column of the cultivator. It prima facie shows that they are the owners of the suit property. After perusal of sale deeds on record (Exh. 4/2 and Exh. 4/3), it appears that the said sale deeds dated 01/01/2016 and 10/02/2022 were executed between defendant No. 2 and defendant Nos. 3 to 16 and between defendant Nos. 1 and 2. It appears that, defendant No. 2 has purchased 2 Guntha area out of suit property from defendant Nos. 3 to 16 by executing registered sale deeds dated 01/01/2016. Also after perusal of sale deed dated 10/02/2022 executed between defendant Nos. 1 and 2, it appears that defendant No. 1 has purchased 0-94-00 H.R. area out of 2 H.R. area from defendant No. 2 by executing said sale deed. On the basis of said sale deeds their names were registered to 7/12 extract of the suit property accordingly.

18. It is the case of the plaintiffs that both above said sale

deeds are illegal, false and not executed with the permission of the plaintiffs. It is further contended by plaintiff's that defendant No. 1 started unauthorised construction on suit property by committing encroachment which is illegal.

19. It is argued by the advocate of the defendant No. 1 that plaintiffs have no locus standi and they have not stated anywhere that how they are connected with the suit property but after perusal of the plaint and say of defendant No.1, it is clear that earlier suit for partition bearing Regular Civil Suit No. 260/1949 was filed in between predecessors of the plaintiffs and their co-sharers. But after perusal of para 18 of say filed by defendant No. 1, defendant No. 1 herself stated that in that suit (Regular Civil Suit No. 260/1949) the predecessors of plaintiffs and predecessors of defendant Nos. 3 to 16 were parties. Hence I find no substance in submission of Advocate for defendant no. 1 that plaintiffs have no locus standi in present case. It is the case of plaintiffs that they have not received possession of their shares as per partition sheet and they are in actual possession of suit properties. After perusal of 7x12 extract of suit properties, nowhere the name of plaintiff's appeared as owner of the suit property. After perusal of copy of judgment in Regular Civil Suit No. 260/1949 (Exh. 4/6), it appears that shares were decided in between parties in that suit. As per that decision in the said judgment, the property in Exh. 443 was allowed to shares of defendant Nos. 71 and 80 and property in Exh. 446 was allowed to 10. 2/3 pies shares and out of it, only 2 annas and 8 pies shares were given to defendant Nos. 71 and 80 (Predecessors of the defendant Nos. 3 to 16). After perusal of Regular Darkhast No. 14/1999 at (Exh. 4/9), it appears that the predecessors of defendant Nos. 3 to 16 i.e defendant Nos. 71 and 80 in original suit No. 260/1949 through their legal heirs had filed the said regular darkhast for execution of the partition as per

shares decided in that suit and the said record and proceeding were sent for execution of partition to District collector as per order of Civil Court. It is contended by the plaintiffs that at the time of filing the said darkhast, decree of the said judgment in Regular Civil Suit No. 260/1949 was torn and the said decree included the documents bearing Exh. 443, 446, 451 which was not included in darkhast and said darkhast was decided on 17/10/2001. While argument Ld. advocate for the defendant No. 1 drawn my attention to document at Serial No. 15 i.e. copy of letter dated 27/06/2007 sent by Civil Court, Kankavali to Sub Division Officer. It appears from that letter that Exh. 443, 446 were destroyed in record room and copy of judgment in Regular Civil Suit No. 260/1949 was forwarded for effective partition and as per judgment in Regular Civil Suit No. 260/1949 possession of 2 aana 8 pai shares of the suit properties was allotted to defendant Nos. 71 and 80 (predecessors of the defendant Nos. 3 to 16) on partition. The defendant No. 1 produced copies of applications of defendant No. 3 for certified copies of Exh. 443 and 446 and his affidavit (Exh. 13 and 14). Also defendant No. 1 brought on record the sanction order of Tahasildar dated 25/03/2008, partition sheet prepared by T.I.L.R. (Exh. 39/1). On perusal of it, appears that T.I.L.R. prepared the partition sheet as per the decree passed by Civil Court. It is also clear that partition sheet was prepared after giving notices to both parties in that suit. Defendant No. 1 filed on record final partition sheet (Exh. 39/2) in which the shares of predecessors of defendant Nos. 3 to 16 ie defendant Nos. 71 and 80 were given as 2 आणे 8 पैसे accordingly and possession of that shares in the suit property were given to defendant Nos. 3 to 16 and their predecessors. After perusal of possession receipt (Exh. 39/3), it appears that possession of their shares are given in presence of Tahasildar, Kankavali on 15/03/2008. The possession of 8.40 H.R. area out of suit property i.e.

Survey No. 312/1 has given to defendant Nos. 3 to 16 on 15/3/2008. As per Gavkamgar patrak (Exh. 39/4) separate possession of said properties are given to defendant Nos.3 to16.

20. Plaintiffs have not challenged the said order of Tahasildar dated 25/03/2008 nor challenged the said final partition sheet. No such evidence brought on record by the plaintiffs.

21. It is Contended by defendant No. 1 that after registering the sale deed, defendant No. 2 filed application for registering his name to 7x12 extracts to Talathi and Mutation Entry No. 1296 was recorded. On perusal of documents vide Exh. 39/5 and 39/6 filed by defendant No. 1 it appears that Mutation Entries Nos. 1296 to 1299 were objected by plaintiff No. 2 and other co-sharers but their objections were rejected by order passed by Circle Officer. The said orders also are not challenged by the plaintiffs. Hence the possession of defendant No. 2 over his 2 Hecter area out of the suit property has remained intact.

22. It is further argued by Ld. Advocate for defendant No. 1 that defendant No. 1 has started construction of farmhouse on her 0.94 HR area out of suit property in which she has invested money also protected the suit property by making cement pole and wire fencing around the suit property which have destroyed by plaintiffs and in that regard she filed complaint in police station. The copy of complaints are on record (Exh. 39/7 and 39/8). She has filed on record the affidavit of Sandip Prabhu Tendolkar (Exh. 39/19). In view of observations laid down in para 31 of Ayaub Khan Noorkhan Pathan case of Hon'ble Apex Court

affidavits of witnesses are not considered to be evidence within meaning of Section 3 of the Evidence Act. In the present case, both the parties have filed evidence of affidavit of their witnesses which will be considered at the stage of hearing of the suit. Plaintiffs have filed on record the notice issued by Grampanchayat (Exh.19/1) and photos (Exh.19/2). Whereas, the defendant No. 1 has filed permission application to Grampanchayat Shirval Exh. 39/18. But plaintiffs have not brought on record any cogent and strong evidence to show their possession.

23. Section 157 of the Maharashtra Land Revenue Code, 1966 stated that, An entry in the record of rights, and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor. In the present case, after perusal of 7x12 extract, it appears the names of defendant Nos. 1 and 2 as owners, neither names of plaintiffs appears to the 7x12 extract nor to any revenue document of suit property. The 7x12 extract has presumptive value as to possession. It is settled law that 7x12 extract does not create any right nor extinguish any right, but it can be relied as to presume possession. In the present case, though plaintiffs have filed photos on record which shows construction but plaintiffs have failed to prove that such ongoing construction is on his property, but on perusal of evidence defendant No. 1 has started construction of farmhouse, on her own property which is in her possession. If status quo would be continued then, she will not cultivate the suit property and her construction would remained incomplete and she will suffer irreparable loss. As the plaintiffs have failed to prove their possession as there is no

strong and cogent evidence. The prima facie case and balance of convenience lies irreparable loss in favour of defendant No.1. Considering this aspect and documentary evidence on record and rival submissions of both parties, plaintiffs prima facie failed to prove their possession and hence they are not entitled for relief of continuation of status quo at this stage. Hence I pass following order.

ORDER

1. The application at (Exh. 20) is hereby rejected.
2. The status quo granted below Exh. 20 is hereby vacated.
3. Advocate of both parties are directed to argue on Exh. 5 on next date.
4. No order as to costs.
5. Suit to proceed accordingly.

Date :25.05.2022

(Smt. D.K.Patil)
Jt. Civil Judge (J.D.),
Kankavali.
MHSl08-3114.