

Order below Exh. 116 in SP.C.S. No. 15/2018

CNR No. MHSN050004972018

(Shankarrao Yadav/Vijaykumar Yadav)

Present application is filed for grant of temporary injunction under Order XXXIX, Rule 1, 2 of the Code of Civil Procedure.

2. Brief facts of the plaintiff's case are as under,

Plaintiff has filed the suit for partition and separate possession in relation to the properties described in the plaint. He submitted that these properties are belonging to the joint family of the plaintiff and defendant No. 1 and they are real brothers. Vasantrao, their father died on 09.10.2016, while their mother Sushilabai died on 12.08.2003. They were teachers and had purchased the suit properties from the income of joint family. They had also purchased some movable properties and there is no partition in between plaintiff and defendant No. 1. Plaintiff is working in Indian Armed Forces and is deputed at Gandhinagar, Gujarat. The plaintiff came to know that his father and mother had deposited huge amounts with various banks and credit societies at Sangli, Islampur and Bahe. But only defendant No. 1 has the knowledge of all these deposits. This plaintiff trusted defendant No. 1 and never enquired about the income of the joint family. The plot No. 2 at village Hubalwadi belongs to this plaintiff, but the construction has been made from the joint family income. Now defendant No. 1 is using the said property. The plaintiff is not able to visit the properties due to the nature of his job. But after the death of the father, the behaviour of defendant

No. 1 has completely changed. Now he is not giving any information to plaintiff about the property and did not account for the amount in the fixed deposits. The plaintiff time and again asked for the details, but defendant No. 1 bluntly denied. Plaintiff and his mother has a joint account in Sangli District Central Co-operative Bank, branch Bahe. However, this defendant No. 1 removed the photo of plaintiff and has affixed his own thereon. He has withdrawn many amounts from the said account without the knowledge of the plaintiff. Thereafter plaintiff made enquiries with defendant No. 2 to 8 about the amount and they have given vague replies. The alleged Will of deceased Vasantrao is false and bogus. Hence the present application for temporary injunction not to alienate the property and not to obstruct.

3. Defendant No. 1 filed say at Exh. 121 and objected the claim. He stated that he has already filed his written statement at Exh. 84 and has made elaborate statements. He further submitted that plaintiff never looked after the father and mother in their old age and this defendant No. 1 took care of them. Hence Vasantrao executed a Will on 09.06.2015 and thereby transferred the properties to defendant No. 1. Thereafter the plaintiff is objecting the entries without any right or interest. The plaintiff had earlier filed similar applications at Exh. 6, 79 and they were not pressed thereafter. This application has been again filed on similar grounds and it is barred by the principles of res judicata. The application is not tenable and the same may kindly be rejected.

4. I have heard Ld. Advocate Shri. S. R. Halade Patil for the plaintiff and Ld. advocate Shri. S. V. Mali for the defendant at length. Following points arise for my determination and I answer them accordingly along with my reasons,

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiffs prove prima facie case in their favour ?	Prima facie case proved only in relation to Gat No. 126 and 127 and only about the relief against alienation.
2.	In whose favour balance of convenience lies ?	Lies in favour of plaintiff upto the extent mentioned hereinabove
3.	Who will suffer irreparable loss in case of grant or refusal of the relief ?	Plaintiff will suffer irreparable loss in relation to above circumstances
4.	What order ?	: Application is partly allowed.

REASONS

As to Point Nos. 1 to 3 :-

5. Plaintiff has filed the present suit for partition and separate possession. Record goes to show that the plaintiff had earlier filed application Exh. 6 and 79 for grant of temporary

injunction. The application at Exh. 6 was not pressed on 14.12.2021, while the application at Exh. 79 was not pressed on 29.07.2019. This application came to be filed on 14.12.2021. Ld. advocate for the plaintiff submitted that defendant No. 1 has been taking undue advantage of the lack of knowledge of plaintiff and is withdrawing huge amount belonging to joint family. Ld. advocate for defendant No. 1 strongly objected the claim and submitted that the plaintiff is only trying to harass this defendant No. 1. He also filed pursis Exh. 126 and gave undertaking that defendant No. 1 will not alienate the property in any manner till the final decision.

6. Present suit has been filed for partition and separate possession alongwith several other reliefs about the alleged document of Will executed by Vasantrao on 09.06.2015, accounts for fixed deposits and so on. It is the cardinal principle of the Hindu Law that a family is presumed to be joint. But such joint family is not presumed to have a joint property. It is for the person who pleads that such joint family also owns a joint property. Herein the plaintiff is basically making averments that his father Vasantrao and mother Sushilabai have acquired the other suit properties from the joint family income.

7. The submissions of defendant No. 1 in this regard need to be considered. Defendant No. 1 in his written statement indeed admitted the relations between the parties. If para 21 of his written statement at Exh. 24 is thoroughly perused, he submitted that the properties bearing Gat No. 126 and 127 at

village Bahe were the only joint family properties. The other properties were acquired by Vasantrya alongwith his brothers by independent income. So also it has been stated that Vasantrya and Sushilabai purchased the properties even in the name of plaintiff. There are also submissions that there was partition in year 1997 and plaintiff alongwith defendant No. 1 were given respective shares in Gat No. 126 and 127. Vasantrya also kept 1/3rd share for himself in these properties. There are also submissions of further partition in various properties.

8. The defendant No. 1 is further coming up with a case that their mother died on 12.08.2003. while their father died on 09.10.2016. These aspects are not very much disputed by the plaintiff. However there is much more dispute about the execution of Will by deceased Vasantrya on 09.06.2015. The defendant No. 1 states that deceased Vasantrya executed a valid Will in his favour, while the plaintiff terms it as a sham and bogus document. So far the adjudication about the claim of the plaintiff as well as the claim of defendant No. 1 will be done at a later stage by giving sufficient opportunity to both the parties. But these aspects cannot be overlooked at this prima facie stage.

9. The plaintiff has produced the 7/12 extracts at Exh. 8 to 16 and property extract at Exh. 17 and 18. Indeed these properties appear in the name of deceased Vasantrya, but a crucial question arises as to whether these properties can be termed as joint family properties of Vasantrya, plaintiff and defendant No. 1. As is discussed earlier, the defendant No. 1 agrees the nature of

property bearing Gat No. 126 and 127. But he has some different opinion about the acquisition of the rest of the properties by deceased Vasantrao at the relevant point of time. So the prima facie case only in respect of Gat No. 126 and 127 at village Bahe can be said to be established. The other aspects and properties need further adjudication.

10. So also the bifurcation of the suit properties need to be given a consideration. The plaintiff has described agricultural properties in para 1 and 2 of the plaint. The house properties are described in para 3 and 4 of the plaint, while some movable properties have been described in para 5 of the plaint. The defendant No. 1 agreed the description of these properties in para 1 to 4 alongwith their identification. However, he has strongly opposed the so called properties described in para 5 of the plaint. The plaintiff though gave several movable items in para 5 of the plaint, there is no prima facie substantiation to the existence of these various articles.

11. Though the nature of properties in para 1 to 4 is disputed, their existence is not in dispute. However, the movable articles in para 5 have no any supporting document on record. The plaintiff is seeking interim order in relation to all the properties mentioned in para 1 to 5. But when there is no prima facie evidence in relation to these movable properties in para 5 of the plaint, it will be very much difficult to pass any order in relation to these properties. It will nevertheless amount to passing a blanket order and it is not at all expected.

12. The defendant No. 1 submitted that present application is not tenable in view of earlier applications. It was stated that this application is barred by principles of res judicata. Admittedly, plaintiff had filed similar applications for grant of temporary injunction at Exh. 6 and 79. These applications were subsequently not pressed by the plaintiff for some reasons better known to him. But it is clear that both these applications were not adjudicated on merits and there is no final order passed thereunder. So in these circumstances, the present application cannot be said to be barred by res judicata, as there is no previous order on merits.

13. Apparently, the plaintiff could establish his prima facie case only in relation to the agricultural lands bearing Gat No. 126 and 127 at village Bahe and they are described in para 1B and 1C of the plaint. So he can seek some remedy about these properties. However, at this point of time, the defendant No. 1 has also filed one undertaking at Exh. 126 whereby he undertook that he will not alienate the suit properties till the final decision of the present dispute. Apparently, this undertaking favours the present plaintiff at least in respect of his prayer for restraintment about alienation.

14. The application goes on to even claim a relief in relation to fixed deposits with defendant No. 2 to 12. Now these defendants have filed their respective written statements in the present matter. None of these defendants have admitted the allegations of the plaintiff and none of them have stated about the

existence of any fixed deposit receipt with them. The plaintiff appears to be in fishing expedition and also included defendant No. 12 pending the present suit. This defendant as well only mentioned about existence of one savings account No. 521. Now the plaintiff though makes a statement that some huge amounts were kept as fixed deposits, none of these defendants give out any such particulars. Furthermore, only a reference to saving account has been made by defendant No. 12, which is also not made a subject matter in the present suit.

15. Unless and until there are clear details about the so called fixed deposits, this Court cannot go on passing such drastic relief of injunction. The plaintiff should have given clear details of such fixed deposits. Now herein the plaintiff states that he has no particulars of such deposits. He has made a prayer for the accounts of such fixed deposits. If this is the situation, the plaintiff cannot expect this Court to pass a blanket order in his favour. The plaintiff will be able to pursue this remedy in the end and without details, this Court cannot consider the relief.

16. The plaintiff proves his prima facie case about obstruction in relation to two lands bearing Gat No. 126 and 127. For the rest he has to lead proper evidence and it requires adjudication. So far as regards alienation is concerned, defendant No. 1 has given an undertaking and as such, a further order can be passed against him. So also the claim in relation to fixed deposits cannot be granted in view of its vague nature. Hence I answer the points accordingly in relation to the prima facie case, irreparable

loss and balance of convenience.

As to Point No. 4 :-

17. In view of the above discussion and the findings, I pass the following order,

ORDER

1. The application is allowed in following terms-
2. Defendant No. 1 shall not obstruct the joint possession of plaintiff on suit land 1B and 1C (more particularly described in para 1B and 1C of the plaint) till the decision of the suit.
3. Defendant No. 1 shall not transfer, alienate the properties described in para 1 to 4 of the plaint till the decision of the suit.
4. Rest of the reliefs in relation to other properties is rejected.

Islampur
Date: 15.03.2022

(Abhijit R. Solapure)
Civil Judge Senior Division,
Islampur