

Order below Exh. 96 in R.C.S. No. 426/2013
(Manish Gurav V/s Uttam Gurav etc. 3)

1. Plaintiff has filed present suit for partition and separate possession of suit property described in the suit as Schedule 'A' and Schedule 'B'. During pendency of the suit, the plaintiff has made the present application under Order 39 Rule 1 & 2 of the Code of Civil Procedure for temporary injunction only in respect of suit property B i.e. land situated within CTS No. 3058/1, praying for restraining the defendant no. 2 from making construction on suit property B.

2. It is contention of the plaintiff that the suit is for partition and at the time of making this application, the suit was fixed for evidence. The suit properties are ancestral properties of the plaintiff and defendants. The father of the plaintiff i.e. defendant no. 1 has expired and defendant no. 2 & 3 are respectively brother and sister of the plaintiff. During pendency of the suit, the defendant no.2, without consent of the plaintiff, has started construction on suit property 'B' by digging pits. As the suit properties are ancestral in nature, the plaintiff has undivided interest in the suit property and therefore, the defendant no. 2 cannot make construction on the entire suit property 'B' without the consent of the plaintiff. If the defendant no.2 carries out such construction, it would hamper the right of the plaintiff in the suit property. The plaintiff has tried to stop the defendant no.2 from making construction on the entire property, but the defendant no.2 threatened the plaintiff and stated that he would make construction on entire suit property 'B', therefore, the plaintiff was constrained to make present application.

3. The defendant no.2 has strongly objected the application vide say below Exh. 105, on the ground that, the suit properties are not ancestral in nature. He has also denied the fact that he is making construction on the entire suit property 'B' without taking permission. According to the defendant the suit property A are Devsthan Enam Properties and suit property 'B' is "G" type holding i.e. the suit property B is owned by the Government. The plaintiff has not sought permission from the Charity Commissioner, prior to filing of the suit. So also the plaintiff has not made Government party to the suit. Therefore, according to the defendant no. 2 the suit is not tenable, so also as the permission from the Charity Commissioner has not been taken and Government is not made a party to the suit, this Court has no jurisdiction to try and entertain this suit. Further more, the defendant no. 2 has contended that he is making construction on suit property 'B' within his share, at the same time he has also contended that, there has been no partition between the parties. According to the defendants the defendant no. 2 has received aid (घरकुल) for construction of the house and is making construction with the help of the aid from the Government and if the construction is not completed, the amount would be again credited to the Government. He has further contended that, he is having children and his family is residing in the house. According to him, his present house is in dilapidated condition and therefore, making construction is necessary for him and for shelter of his family. Therefore, defendant has prayed that application be rejected.

4. I have heard both the Advocates for plaintiff and defendant no.2. Perused documents and the pleadings. After considering the same following points arise for my determination to which I am recording my findings with reasons there on.

Sr.No.	POINTS	FINDINGS
1)	Whether the plaintiff has prima facie case ?	Affirmative
2)	Whether the balance of convenience lies in favour of the plaintiff ?	Affirmative
3)	Whether the plaintiff will suffer irreparable loss if injunction is not granted as prayed ?	Affirmative
4)	What order?	As per final order.

REASONS

AS TO POINT NOS.1 TO 3 :-

5. The plaintiff has categorically pleaded that, the suit properties are ancestral family properties. So also according to the plaintiff, the plaintiff and defendant are cultivating the suit property 'A' jointly and earning their livelihood. On the contrary the defendant has categorically pleaded that suit properties are not ancestral properties. The plaintiff has filed on record 7/12 extracts and City Survey extracts of suit property 'A' & 'B' respectively. Suit property 'A' are shown as Devsthan Property but the names of the parties are appearing in the column of holders. So also the City Survey Extract of Suit property B shows that the names of plaintiff and defendant nos. 2 & 3 are appearing in the column of possessors. This shows that the plaintiff and the defendants are jointly having interest in the suit property and are jointly having possessary rights in the suit properties.

6. Though the defendant no. 2 has denied the fact that suit properties are ancestral in nature, at the same time the defendant no. 2 has made self contradictory pleading that after the demise of

Dattatraya, his heirs are Arvind, Subhash, Madhukar and Uttam and subsequent to Dattatraya's death Arvind, Subhash, Madhukar and Uttam had started jointly possessing the suit properties. Thereafter, he has further pleaded that till today there has been no partition between them. This shows that the defendants pleadings are self contradictory. The Plaintiff has also filed on record a letter dated 02.02.2016, issued by defendant no.2 to the Talathi taking objection for Mutation of the name in the record of rights of the suit property 'A'. The letter also supports the contention of the plaintiff, that the suit properties are ancestral in nature. Therefore, it is clear that parties have undivided interest in the suit property, further more, it is admitted that there has been no partition between them till today.

7. The application is opposed on the ground that, suit property 'A' are belonging to ' Chowndeshwari Devsthan ' and ' Ekvira Dev Devsthan '. But the defendant no. 2 has not pleaded in the written statement that, suit property 'B' is a Government land and said objection is for the first time taken in the say to the application under order. According to the defendant no.2, this Court does not have jurisdiction to try the present suit. But the point of jurisdiction, would be decided later and at present the issue is whether plaintiff has made out prima facie case and whether defendant has any right to make construction on the entire suit property 'B'.

8. It is seen that the defendant no. 2 has contended that he has received aid for construction of the house. In support of his contention, he filed on record copy of his passbook, below Exh. 118. On perusal of the passbook it is seen that amount of Rs. 40,000/- has been credited to his account on 08.03.2019 from PradhanMantri Avas

Yojana. It is seen that amount has been credited prior to more than one year of making the present application. Further more, the defendant no. 2 has not filed on record any documentary evidence as to with respect to which property the aid has been received by him and he has also not pleaded as to why the amount was not utilized till the present application was made. He has also not filed any documentary evidence to show that he had taken consent of plaintiff and defendant no.3 prior to and during making application for receiving the aid. This shows that the pleadings of the defendants are vague in nature.

9. The present application is only in respect of suit property 'B'. The City Survey Extract of suit property 'B' clearly shows that names of plaintiff and defendants have been mutated thereon. This shows that both the parties are having interest in the suit property. On the other hand the defendant no. 2 has not pleaded as to to what extent construction is being carried out by him. He has only vaguely pleaded that he is making construction on his share. At the same time, he has made self contradictory pleading that there has been no partition till today. If there is no partition, it is not clear how the defendant no. 2 would make construction on a specific portion of the land, without consent of the parties. The plaintiff has specifically pleaded that, the defendant no.2 is having his old house and is also making construction on the remaining entire land of suit property 'B'. As the plaintiff and defendants are having undivided interest in the suit property 'B', the defendant no. 2 cannot unilaterally make construction on the entire land without consent of the other co-sharers. The contention of the defendant that suit property 'B' is Government land, cannot be considered at this stage, as both the parties are having undivided possessory interest in the suit property 'B', hence, defendant no. 2 by

himself cannot make construction thereon.

10. The fact that the suit property 'B', according to the defendant no. 2 is Government land, also goes against the defendant no. 2, as he cannot make construction on Government land without having authority and permission to do so.

11. The fact that defendant no. 2 has raised objection to the jurisdiction of this Court, cannot by itself, at this stage, make this Court, to discard this application outrightly. The documentary evidence in respect of suit property 'B' shows that plaintiff and defendant are having undivided possessory interest in the suit property and therefore, the defendant no. 2 cannot unilaterally construct thereon without consent of the plaintiff and defendant no. 3. If the contention of the plaintiff that defendant no. 2 is making construction on the entire suit property 'B', is accepted, it would lead to taking away the right of the plaintiff on the suit property. So also if the construction is made by the defendant, it would change the nature of the suit property permanently, this would also hamper the rights of the plaintiff. The plaintiff has pleaded that the defendant no. 2 has not demolished the old house and is making construction of a new house. This shows that the defendant no. 2 is having shelter of his old house. Even otherwise that cannot be a defense, as if he is allowed to make construction, it would take away / deprived the plaintiff of her possessory right in the suit property.

12. It is also necessary to point out that, the present suit is pending since 2013, and the defendant no. 2 was having knowledge of the same, inspite of this, the defendant no. 2 has started construction

on suit property 'B' without intimation to the Court. This also shows that the conduct of the defendant no. 2 is not proper. It is also not his case that, due to natural calamity, his house has been destroyed and he had to unwillingly make construction thereon. This also shows that the defendant no. 2 has not come with clean hands. Therefore, according to me, plaintiff has made out prima facie case and if injunction is not granted the plaintiff would suffer irreparable loss. And therefore, balance of convenience lies in favour of plaintiff. Hence, I answer Point nos. 1 to 3 in Affirmative.

AS TO POINT NO. 4

13. Considering the affirmative findings to point Nos. 1 to 3, I proceed to pass following order which according to me would meet the ends of justice.

ORDER

1. Application is allowed.
2. Status quo granted vide Exh. 102 and operating till today, is confirmed and defendant no. 2 is temporarily restrained from making any further construction on suit property 'B' till the conclusion of the suit.

Islampur
Date : 10.09.2020

(N.D. Jadhav)
3rd Civil Judge Jr.Dn., Islampur.

CERTIFICATE

I affirm that the contents of the P.D.F. file are same, word to word, as per original order.

Name of the Stenographer	:	Smt. S.S. Kamble,
Court Name	:	3 rd Jt. C.J.J.D. & J.M.F.C., Islampur.
Date of Order/Judgment	:	10.09.2020
Signed by P.O. on	:	10.09.2020
Uploaded on	:	10.09.2020