



RCS No.196/2023

Parshuram + 1

V/s.

Ratankumar + 2

ORDER PASSED BELOW APPLICATION (EXH. No.5)

The plaintiffs have filed the application under Order 39 Rule 1 and 2 and Section 151 of the Code of Civil Procedure, 1908 (for short 'the Code') praying for temporary injunction against the defendants.

The case of the plaintiffs, in brief, is as under.

02. Plaintiff No. 1 is husband of plaintiff No. 2. In the year 1987 – 1988, plaintiff No. 1 purchased 1) Block No. 24/2 area 0.08R out of 0.16R, 2) Block No. 26/2 area 0.08R out of 0.16R, 3) Block No. 27 area 0.01R out of 0.02R, 4) Block No. 28/2 area 0.18.50R out of 0.37R, plaintiff No. 2 purchased 1) Block No. 25/2 area 0.27R out of 0.54R, 2) Block No. 28/1 area 0.10R out of 0.20R, 3) Block No. 28/3 area 0.03.50R out of 0.07R (for short "the suit properties"). Since then, they have been cultivating the suit properties and taking crops like vegetables, sugarcane and grass in the suit properties. The plaintiffs have even registered their sugarcane with sugar factories. They have also sent sugar cane from the suit properties to sugar factory. The defendants have no nexus with the suit properties. However, defendant No. 1 illegally comes to the suit properties and objects to the plaintiffs' possession. On 11 January 2023, the plaintiffs were arranging to send the sugarcane to sugar factory, defendant No. 1 came there and objected to it. Defendant No. 1 also abused the labours. Again, on 2 July 2023 defendant Nos. 1 to 3 came there and threatened the plaintiff that they would not allow the

plaintiffs to cultivate the suit properties. They also threatened the plaintiffs to not come to the suit properties.

03. The plaintiffs contend that they are old aged persons. They tried to make understand the defendants. However, the defendants did not pay any heed to it. Therefore, the plaintiffs have prayed that the defendants be temporarily restrained from obstructing to the possession of the plaintiffs over the suit properties and the defendants be restrained temporarily from entering the suit properties

04. The defendants have filed their reply and written statement jointly at Exh. No. 19. They have denied the case of the plaintiffs. They contend that original owner of the suit properties was Babu Maruti Kabbade. He died in the year 1997 living behind him plaintiff No. 1, defendant No. 2 and other sons and daughters. Defendant Nos. 1, 3 are legal heirs of deceased son of deceased Babu. Deceased Babu was owner of agricultural lands from Block Nos. 414/2, 415/2, 416/2, 417, 418/1, 418/2, 418/3 its new Block Nos. 24/2, 25/2, 26/2, 27, 28/1, 28/2, 28/3 and a house also. That properties are ancestral properties of the plaintiffs and defendants. There is no partition amongst the plaintiffs and defendants of the suit properties and other properties. Therefore, the alleged sale deed of the plaintiffs is not binding upon the defendants. The defendants are cultivating some portion of the suit properties peaceably. Therefore, the plaintiffs cannot claim for perpetual injunction against the defendants. Therefore, they have prayed to reject the application.

05. Considering the pleadings and documents available on record, following points arise for my determination. I have answered

each of it for the reasons stated below.

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the plaintiffs prove their case prima facie ?	No.
2) Whether balance of convenience lies in favour of the plaintiffs ?	No.
3) Whether the plaintiffs will suffer irreparable loss which cannot be compensated in terms of money, if injunction is not granted ?	Yes.
4) What order ?	As per final order.

REASONS

AS TO POINT NO. 1 :

06. The substance of the case of the plaintiffs is that they have purchased the suit properties in the year 1987-1988. It is further the case of the plaintiffs that the defendants have no nexus with the suit properties. As against this, the defendants claim that the suit properties are joint family properties of the plaintiffs and defendants and there is no partition amongst them. In this backdrop, sale deeds of the plaintiffs require to be considered.

07. The plaintiffs vide list of documents (Exh. No. 3/11) have placed on record certified copy of sale deed. I perused it. It shows that one Suresh Babu Kabade has executed the sale-deed in favour of plaintiff No. 2. The sale deal is in respect of city survey No. 418/1, 418/ 3, 415/2. The vendor mentions in the sale-deed that he is selling his half share. It is also mentioned that the said half share is undivided share. It shows that the predecessor in title of plaintiff No.

2 sold his undivided half share to plaintiff No. 2. Therefore, it cannot be said that possession of exact land was given to plaintiff No. 2.

08. Sale-deed (Exh. No. 3/11) lends assurance to the claim of the defendants that there is no partition amongst the plaintiffs and defendants. It is because, the predecessor in title of plaintiff No. 2 is Suresh Babu Kabade. The defendants in their written statement have mentioned genealogy of deceased Babu. It shows that Suresh Babu Kabade is son of deceased Babu. Deceased Babu is brother of plaintiff No. 1.

09. The plaintiffs have placed on record another sale deed vide list of documents (Exh. No. 3 /12). That sale deed is executed by Suresh Babu Kabade in favour of plaintiff No. 1. I perused it. It is certified copy. From that sale deed, it appears that the sale deed is in respect of Block Nos. 417, 418/2, 416/2, 414/2. In respect of Block No. 418/2, it is mentioned that undivided half share is being sold. In respect of Block No. 417, it is mentioned that undivided half share is being sold. In respect of Block Nos. 416/2, 414/2, it is also mentioned that out of it, half undivided share is being sold. It also shows that without there being any partition amongst the plaintiffs and defendants, those sale deeds has been executed in favour of the plaintiffs. Therefore, it cannot be said that possession of exact land was given to plaintiff No. 1.

10. The plaintiffs vide list of documents (Exh. No. 26) have placed on record memorandum of oral partition. I perused that memorandum of partition. It is shown that Suresh Babu Kabade is dead and names of his legal heirs have been mentioned. It is also worth here to note that the alleged memorandum of partition do not

bear any signature of the defendants. In fact, most of the executants have not signed it. One of the legal heir of deceased Suresh Babu Kabade has not signed it. In this regard, the learned advocate for the plaintiffs argues that the defendants are neither partitioning the suit properties nor they are allowing the plaintiffs to cultivate the suit properties. Be that as it may. The fact remains that without there being partition and allocation of share to deceased Suresh, the plaintiffs do not get possession of the suit properties as per sale deeds. The plaintiffs failed to prove their prima facie possession over the suit properties. Therefore, I answer issue No. 1 in the negative.

AS TO POINT NOS. 2, 3 :

11. Considering the facts and circumstances of the case at hand, the defendants have right and interest in the suit properties. They are also co-owners of the suit properties. They cannot be restrained. The plaintiffs have not filed suit for partition. Therefore, balance of convenience is not in favour of the plaintiffs. Therefore, I answer point Nos. 2 in the negative. The plaintiffs have placed on record receipts issued by sugar factory showing that plaintiff No. 1 had supplied sugarcane to it. The plaintiffs has also placed on record no objection certificate issued by one society thereby, allowed plaintiff No. 2 to receive advance payment. These documents, to some extent, support to the claim of the plaintiffs that they have been taking sugarcane crop from the suit properties. It appears that some portion of the suit properties or some other properties are being used for sugarcane crop. On refusing to grant injunction, the plaintiffs may find difficulty in growing sugarcane crop. It may result to irreparable loss to the plaintiffs. Therefore, I answer point No. 3 in the affirmative.

AS TO POINT NO. 4 :

12. Considering the findings of point Nos. 1, 2, though, finding of point No. 3 in the affirmative, the application requires to be rejected. Therefore, I pass the following order in support of point No. 4.

ORDER

1. The application is rejected.
2. Costs in cause.

Miraj
Date : 15.10.2024

(R. S. Wankhede)
Civil Judge Junior Division
Miraj

CERTIFICATE

I affirm that the contents of this PD.F file judgment/order are same, word to word, as per the original judgment/order.

Name of the Stenographer. : K. A. Udagave (Steno. - III)
Court. : Civil Judge Junior Division
and J.M.F.C. Miraj

Dictation Date : 15.10.2024
Order signed by
the Presiding Officer on. : 16.10.2024
Order uploaded on. : 17.10.2024