

ORDER BELOW EXH – 5 IN RCS NO. 26/2022

The plaintiff has filed the present application under Order 39 Rule 1 and 2 of Code of Civil Procedure, 1908.

Brief Facts of the Plaintiff's Case is as under :-**2. Description of Suit Property :-**

District and Sub – District Sangli, Tal - Kavathe Mahankal, at Malangaon village an agricultural land bearing Gat No. 72 admeasuring its area 03 H. 62 R land, out of which the area admeasuring 0.24 R land and 0.82 R land having its boundary marks are as follows :-

Towards East : - the property of Balasaheb Vasantrao Shinde

Towards West :- the property of Babaso Shripati Mali

Towards South :- the property of Bhausahab Vitthal Shinde

Towards North :- the property of Amol Prataprao Shinde

The above – mentioned agricultural land and the house property situated in it bearing its Grampanchayat Property No. 851 (*as well described in para no. 1 and 1 B of the application*) is the subject matter of the suit. (*hereinafter called as 'suit property' for the sake of brevity.*)

3. The plaintiff has come with the case that the suit properties are ancestral properties of plaintiff and defendants. The area of 0.24 R out of Gat No. 72 is, at present standing in the name of plaintiff and defendant no. 1 to 3. The area of 00.82 R of above Gat Number is standing in the name of defendant no. 1 only. The plaintiff and defendant no. 1 to 3 are having the $\frac{1}{4}$ share each in above 0. 82 R. There exists a house property within the limit of Malangaon Grampanchayat bearing its

Property number 851 in Gat No. 72. The suit property is originally belongs to one Mahadev who is the father's father's of plaintiff and defendant no. 1 to 3. After the demise of common ancestor i.e. Mahadev, a partition was take place amongst the sons of Mahadev. By virtue of such partition, the father of plaintiff and defendant no. 1 to 3 i.e deceased Parasharam inherited the 01 H. 06 land out of the suit property and house property therein. In spite of the above situation, the defendant no. 1, by applying pressure techniques upon the deceased Parashram, got entered his name upon the area of 0.80 R land in Gat No. 72. The name of the defendant no. 1 was entered upon such 0.82 R area without executing any document or registered deed. The plaintiff and defendant no. 2 and 3 also being the legal heirs of deceased Parashram are entitled to get their respective share in such 0.82 R area. However, the defendant no. 1 is in attempt to alienate the suit property. Previously, no partition was take place between plaintiff and defendant no. 1 to 3 after the demise of their father Parasharam. Therefore, the plaintiff and defendant no. 1 to 3 have $\frac{1}{4}$ share each in suit property. The defendant no. 1 has recently expressed her view about alienation of suit property. If suit property was being alienated by defendant no.1, then the plaintiff will suffer from irreparable loss. Hence, the defendant no. 1 be restrained from creating any third party interest in the suit property in any of the manner.

4. The defendant no. 1 appeared in the suit and contested the application by filing reply vide Exh – 25. It is the contention of the defendant no. 1 that the partition between father of defendant no. 1 named as Parsharam and his brother named as Shankar was took place with regard to suit property including agricultural and house property therein after

the demise of their father. Afterwards they became the owners of their shares as their shares became their separate property. Shankar and Parasharam had sold the area upto 0.81 R out of the suit property by way of registered sale deed in favour of defendant no. 5. The plaintiff and defendant no. 2 and 3 had not taken any objection with regard to such alienation. Afterwards, the father of defendant had alienated the area upto 0.82 R in his favour out of the suit property. Accordingly, the name of the defendant no 1 was entered on 7/12 extract of suit property by mutation entry no. 1972. Since then, the defendant no. 1 is occupying such area as an owner of it. No objection has been raised either by plaintiff or by defendant no. 2 and 3 till today with regard to above alienation and mutation entry. So also, in the year 2005, the father of defendant no. 2 has executed the sale deed in favour of Rangarao Rajage with regard to 0.41 R area out of suit property. After the death of Rangrao Rajage, the names of defendant no. 6 and 7 were entered upon the property extract. Since 1994, the defendant no. 1 is enjoying the area of 0.82 R uninterruptedly, openly and continuously. In this context, the defendant no. 1 become the owner of such area. The defendant no. 1, by investing large sum in suit property, enjoying the same and for better cultivation, he advanced large sum of loan from banks and co-operative societies. Already, partition of suit property had taken place. Therefore, out of suit property, only area upto 0.24 R and the old house property ovet it, is open for partition and none else. Considering all the above aspects, the application of the plaintiff may be rejected.

5. On the basis of the facts alleged, document filed on record and submissions made by parties, following points arise for my determination to which I recorded my findings along with reasons thereto which are as

under -

Sr. No.	POINTS FOR DETERMINATION	FINDINGS
1	Does plaintiff prove that <i>prima facie</i> case is in her favor ?	YES
2	Does plaintiff prove that balance of convenience lies in her favor ?	YES
3	To whom irreparable loss will cause ?	To The Plaintiff If Relief of Temporary Injunction is Refused.
4	What Order ?	Application is allowed.

REASONS

POINT NO. 1 TO 3

7. As the point no. 1 to 3 are inter connected to each other and the subject matter of these points is also same. Therefore, to avoid the repetition of discussion, these points are taken together for discussion. While deciding the present application, the given facts has to be seen within the domain of Order 39 Rule 1 and 2 of Code of Civil Procedure, 1908 with reference to the *prima facie* case, balance of convenience and irreparable loss.

8. In support of contentions, the plaintiff has relied on the documents filed vide list of documents at **Exh – 3**.

9. The defendant no. 1, in his support has filed documents vide **Exh – 28**.

UNDISPUTED FACTS :-

10. Relation between plaintiff no. 1 and defendant no. 2 to 4 with defendant no.1, nature of suit property (i.e. ancestral), standing of name of defendant no. 1 over the suit property upto 0. 82 R area, partition between father of defendant no. 1 (also of plaintiff and defendant no. 2 and 3) and his brothers, alienation of certain area out of suit property in favour of other defendants etc. these are undisputed facts between the parties.

11. The application is supported with affidavit.

12. Heard the Ld. Advocates for both parties at length. They argued as per their respective submissions.

13. The question involved in the present application is whether the plaintiff *prima facie* proves that she has right and interest in suit property and whether there is any apprehension as to suit property being alienated or created third party interest by defendant no. 1 ?

14. With regard to question no. 1, the plaintiff has relied on the documents filed vide Exh – 3. From the perusal of account extract of suit property (Exh- 3/1), it appears that the area of 0.24 R out of entire sui property is standing in the name of plaintiff and defendant no. 1 to 3. This fact is not disputed between parties. Therefore, it needs no further discussion. Further, from the perusal of 7/12 extract of suit property (Exh – 3/2), it appears that the area of 0.82 R is standing in the name of defendant no. 1 and this fact is disputed by the plaintiff. After perusal

of Mutation Entry No. 1972 (Exh – 3/4), it reveals that the father of defendant no. 1 (and also of plaintiff and defendant no. 2 and 3) has transferred the area of 0. 82 R out of the suit property in favour of his son i.e. the defendant no. 1 in the year 1994. The pleading of the parties and the documents on record does not indicate whether the plaintiff has raised any objection or complaint with regard to Mutation Entry No. 1972 till today.

15. In the context of Mutation Entry No. 1972, it is mainly the contention of the plaintiff that the suit property is the ancestral property of plaintiff and defendants. The father of the plaintiff and (that of the defendant no. 1 to 3) has got the share in Gat No. 72 by virtue of partition took place between him and his brothers. In this regard, the suit property is ancestral property. Therefore, the father of plaintiff has no such right of alienation in favour of defendant no. 1. The plaintiff also has her share in it.

16. As against this, in defence, the defendant no. 1 has relied on the documents filed vide Exh – 28. After perusal of Certificate (Exh – 28/1), it appears that the defendant no. 1 has advanced a loan from Co -operative society upto Rs – 7,85,000/-. The documents filed vide Exh – 28/2, 28/3, 28/5 and 28/6 are in connection with other transaction in respect of suit property. Those transactions are not disputed by the plaintiff. Therefore, no much attention is required to be given to those facts. The defendant has filed the certified copy of Mutation Entry No. 1972 vide Exh – 28/4. In defence, he relied on the Mutation Entry no. 1972.

17. From the above facts and circumstances and submissions advanced

by the advocates for both parties, it appears that the area 0. 24 R (I.e.s-
tanding in the name of plaintiff and defendant no. 1 to 3) and area 0.
82 R, both are the parts of one and the same Gat No. 72 i.e. suit prop-
erty. Previously the area of 0.24 R and 0.82 R was standing in the
name of Parashram (i.e. father of plaintiff). Further, the father of
plaintiff inherited his share in suit property by virtue of partition be-
tween him and his brothers. This fact, even is not denied by the defen-
dant no. 1. Therefore, *prima facie* it appears that the suit property is an
ancestral property of plaintiff and defendant no. 1 to 3. The only con-
tention with regard to suit property by defendant no. 1 is that after par-
tition, the father of defendant no. 1 became the seperate owner upto
his share. Therefore, he could alienate his share to the defendant no. 1.
However, it is being the adjudication of application for temporary appli-
cation, facts needs to be considered in parameters of '*prima facie*'. A case
of *prima facie* means a case at the first instance. Therefore, the question
as to the alienation made by the father of plaintiff in favour of defen-
dant no. 1 is valid or not ? needs the thorough scrutiny and detail evi-
dence. Hence, it can not be decided at this juncture. However, it can
be taken into consideration at the stage of final hearing.

18. Further, the Ld. advocate for defendant no. 1 submitted that the
partition between plaintiff and defendant no. 1 to 3 has already taken
place. Therefore, for same reason, no partition can be effected. How-
ever, to substantiate this fact *prima facie*, the defendant no. 1 has not
produced any documents on record. Therefore, in such absence, the
submission of the defendant no.1 can not be taken into consideration at
this stage.

19. Now it is *prima facie* appears that the father of the plaintiff named

as Parashram inherited his share in suit property by virtue of partition with his brother. As per their partition, they were enjoying and occupying their respective share. Therefore, it can be *prima facie* said that the suit property is the ancestral property of Parashram. In this scenario, the plaintiff and defendant no. 1 to 3 being the legal heirs, are entitled to inherit their share out of the share of Parashram in suit property subject to exceptional contingency. The relation between parties is not disputed. Therefore, it can be *prima facie* said that the plaintiff has a right, title and interest in the suit property being the legal heir of Parashram. Admittedly, the defendant no. 1 has created an interest in suit property by availing a loan from credit society on the basis of Mutation Entry no. 1972. By such entry, the name of the defendant no.1 was mutated over the 7 /12 extract of suit property. Now it is well settled principle of law that the entries upon the 7/12 extracts can be taken into consideration only for the fiscal purpose. In this regard, the plaintiff has relied on principle laid down in ***Balwant Singh And Another V. Daulat Singh (dead) By Lrs And Others reported in (1997) 7 Supreme Court Cases 137.*** In para no. 21 of the above ruling, the Honourable Apex Court relied on the principle laid in ***Sawarni V.INDER Kaur (1996) 6 SCC 223-*** in which it has been held that “7. *Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question*”. This principle supported the contentions of the plaintiff.

20. So far as, the alienation of 0.82 R area made by the father of plaintiff in favour of his son i.e defendant no.1, is it valid or not ? That can be decided at the conclusion of the hearing. At this juncture, the facts

has to be seen at its first instance. As I already discussed above, there appears a right, title and interest of the plaintiff in suit property. Though the plaintiff has not challenged the mutation entry no. 1972 till today, still to avoid the multiplicity in the proceedings and further to avoid the complications in the proceedings, granting of equitable relief in favour of plaintiff will be just and proper. In result, I hold that the plaintiff has proved that she has *prima facie* case in her favour. Hence, I answer point no. 1 in affirmative.

21. At the risk of repetition, plaintiff has proved that she has *prima facie* case in her favour, therefore the balance of convenience automatically lies in her favour. The question that as to whom the irreparable loss will be caused, can be decided with reference as to whom greater hardship will be caused in the case of granting or refusing the equitable relief. Admittedly, the defendant no. 1 is enjoying the suit property and the income therein. Therefore, if injunction is granted in favour of plaintiff, no hardship will be caused to the defendant no.1 because he will be in continuation of suit property and enjoyment therein. As against this, if such relief is refused, plaintiff will suffer from irreparable loss and further scope for multiplicity of proceedings will rise. Considering all the above aspects, I hold that the plaintiff has proved that balance of convenience lies in her favour and further she will suffer from irreparable loss if relief of temporary injunction will refuse to her. Hence, I answer point no. 2 and 3 in affirmative.

POINT NO. 4

22. As per the discussion as to point no. 1 to 3, I pass the following order.

O R D E R

1. Application is hereby allowed.
2. The defendant no. 1 is hereby temporarily restrained from creating any third party interest in suit property in any manner till further order.
3. Costs shall follow the event.

Date :- 14/12/2022

Priyanka J. Ligade

Place – Kavathe Mahankal

Jt. Civil Judge Junior Division