

R.C.S.NO.54/2018

(Dnyanu Kolekar Vs. Pandurang Kolekar)
(CNRNO.MHSNO70003932018)

ORDER BELOW EXH. 5

(Passed on 14th September 2018)

This is an application filed by the plaintiff for temporary injunction under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure.

(02) Facts which gave rise the application are as under :-

Plaintiff has filed suit for declaration in respect of adoption deed executed and registered in the name of defendant by one Bhavarabai the widow of Bayaji. It is contended that Yesu, the father of plaintiff and Bayaji were the two sons of common ancestor Bhau Kolekar. They had jointly purchased S.No.122, 123 and 129 within the jurisdiction of village Chorochi Tal. Kavathe-Mahankal Dist. Sangli from Pandurang Bhau Yamgar by way of registered sale deed dated 30.06.1951. Both of them had one-half (1/2) share each in all the three agricultural lands. During implementation of the consolidation scheme old S.No.122/2 was converted into new Gut No.598 whereas old S.No.129 was converted into new Gut No.599 which are the properties in dispute in the present suit.

(03) It is contended that Bayaji and his wife Bhavarabai had no issue. Bayaji died on 16.05.1981 leaving behind only widow Bhavarabai who is also dead. Therefore, being the sons of brother Yesu, plaintiff and his deceased brother i.e. Tukaram were the only legal heirs remained to inherit the properties of Bayaji and his wife Bhavarabai. Tukaram and his wife Pavabai died in the year 2012 and 2014 respectively. Defendant Pandurang is son of Tukaram and Pavabai alongwith other two sons i.e. Sadashiv and Bapu and one daughter Draupadi.

(04) This being the position, according to the plaintiff, he has undivided share in the suit properties i.e. agricultural lands Gut No. 598 and 599 left behind by deceased Bayaji. However, recently he came to know from the revenue office that defendant Pandurang filed an application to enter his name to the record of rights of the suit properties to the extent of 1/2 share claiming himself to be the adopted son of Bhavarabai, the widow of Bayaji Kolekar. Upon receiving the notice from the Tahsildar regarding said application, plaintiff get knowledge of the so called adoption deed on the basis of which defendant tried to enter his name for 1/2 share in both the suit properties being the heir deceased Bayaji.

(05) According to the plaintiff after the death of Bayaji, his

widow Bhavarabai had not adopted defendant in any manner nor said defendant showed himself to be the adopted son of Bhavarabai till 2017. For this first time after death of Bayaji, defendant tried to enter his name in the record of rights of the suit properties for 1/2 share of Bayaji. It is further contended that the no legal consent of wife of Tukaram, biological father giving in adoption of Pandurang was obtained for the said adoption. Furthermore, the adopted son i.e. Pandurang was shown to be 17 years old at the time of said adoption. Due to the aforesaid defects, the adoption deed is not maintainable in the eyes of law. Therefore, plaintiff has filed this suit for declaration that said adoption is null and void. By way of this application plaintiff has prayed to restrain the defendant by way of temporary injunction from alienating the suit properties in any manner or creating third party interested therein till the final disposal of suit by taking undue advantage of his name entered in the record of rights for the share of deceased Bayaji.

(06) Defendant appeared and filed his reply/written statement vide Exh.15. He has denied the entire allegations made by the plaintiff as well as the application for temporary injunction. However, he has admitted the relationship with the plaintiff and also the fact that the suit properties were purchased by Yesu and Bayaji jointly in the year 1951 from Pandurang Bhau Yamgar. According to the defendant he was taken in adoption by Bhavarabai the widow of deceased Bayaji in the year 1984 in presence of the relatives and was given so by his

biological father and mother in the adoption with their full consent. He has acquired the name of Bayaji since the date of the adoption and has every right to inherit the properties left behind by Bayaji. It is further contented that already his name was entered in the record of rights of the property of Bayaji, which was removed by mistake due to the entries of encumbrance of District Land Development Bank taken in the concerned record. He had moved an application to correct the record of rights by entering the name of deceased Bayaji and as Bayaji is dead, the entry of his name being the adoptive son of Bhavarabai. According to the defendant, plaintiff has no concern with the suit properties as his name is already entered in the record of rights as adopted son of deceased Bhavarabai. However, in order to grab the properties of the defendant, he has filed this false suit.

(07) I have heard learned advocate Mr.V.G.Patvegar appearing on behalf of plaintiff and learned advocate Mr. F.N. Kotwal appearing on behalf of defendant at length.

(08) Following points arise for determination to which I have given my findings along with reasons thereon are as follows :

<u>S.N.</u>	<u>POINTS</u>	<u>FINDINGS.</u>
1.	Whether plaintiff has prima facie case?	Partly in the affirmative.
2.	Whether balance of convenience lies in favour of plaintiffs?	Partly in the affirmative.

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| 3. | Whether plaintiff would suffer irreparable loss? | Partly in the affirmative. |
| 4. | What order? | The application is partly allowed. |

REASONS.

(09) Prima-facie case, balance of convenience and irreparable injury are the three requirements for obtaining injunction. One of the three requirements, as stated above, for obtaining injunction is that the plaintiffs must establish a prima-facie case in their favour. The Court must not only be satisfied that the claim is not frivolous or vexatious but there is a serious question to try. The requirement of prima-facie case need the plaintiff to establish from the findings that he has a debatable case in his favour and without the same no injunction can be granted.

AS TO POINT NO. 1 to 3 :-

(10) All points are interlinked and interconnected with each other, therefore taken for consideration together for their convenient discussion.

(11) I have minutely gone through the pleadings of both the parties as well as documents produced by them on record. Plaintiff

has come out with the specific case that, the defendant has claimed to be the adopted son of deceased Bayaji on the basis of registered adoption deed executed before the Sub-Register, Sangola on 17.05.1984. According to the plaintiff, he had no knowledge about the said adoption deed till year 2017 and he came to know for the first time about the same when defendant moved an application before the Tahsildar for the so called correction in the record of rights. On the other hand, defendant has put forth the specific case that he was given in adoption in the year 1984 by his biological parents to Bhavrabai, the widow of Bayaji and since then he has acquired the new relationship with the adoptive family. He is known as Pandurang Bayaji Kolekar since 1984. Therefore, at this stage, plaintiff has no right to challenge the said adoption deed.

(12) On going through the record of the suit, it is seen that, admittedly Yesu and Bayaji the real brothers had purchased 3 (Three) landed properties i.e S.Nos. 122, 123 and 129 situated within the jurisdiction of village Chorochi Tal. Kavathe-Mahankal through Pandurang Bhau Yamgar in the year 1951. Admittedly, both the parties have no dispute in respect of the previous S.No.123 nor any document is produced on record in respect of the said property. The dispute is raised in the present suit in respect of S.No.122 and 129 which are now converted after the implementation of the Consolidation Scheme into Gut Nos. 598 and 599 respectively. It is further seen from the consolidation extract that the names of Yesu and

Bayaji were entered for 8 Anna (1/2) each to both the properties. Furthermore, the 7/12 extract of Gut No.598 reflects that the plaintiff i.e. Dnyanu Yesu Kolekar and his brother Tukaram Yesu Kolekar have 8 Anna (1/2) share each in the said properties. However, as far as Gut No.599 is concerned, name of plaintiff appears to be entered for 1/4th share and name of defendant is appears to be entered for 1/2 share. Remaining 1/4th share out of the said land appears to be in the name of remaining heirs of deceased Tukaram i.e. Sadashiv, Bapu, Chandrabai and Draupadi. The name of defendant Pandurang appears to be entered by way of mutation entry No.4431.

(13) It is further interesting to note here from the mutation entry No.4513 and 4517 produced by defendant that the name of Bayaji Bhau Kolekar has been entered in the record of rights of Gut No.598 vide order of Tahsildar dated 15.02.2018 for 1/2 share and thereafter vide M.E.No.4517 the name of Pandurang Bayaji Kolekar is entered in the record of rights of Gut No.598 being the adopted son of deceased Bhavarabai Bayaji Kolekar. In the recent 7/12 extract produced by defendant, his name is shown to be entered in the place of Bayaji Bhau Kolekar being his legal heir for 1/2 share in the Gut No.598.

(14) From the aforesaid documents, it is clearly seen that the name of plaintiff and his deceased brother Tukaram was entered in the

record of rights till year 2017 and no effect of so called adoption deed was taken in the record of rights till the application moved by defendant before Tahsildar. Though, the defendant has claimed to be adopted son of deceased Bhavarabai since year 1984, not a single document is produced on record by him to show that he is adopted son of deceased Bhavarabai since year 1984. He could have produced on record the Election Card, Aadhar Card, Ration Card or any other similar document to show that he is known as Pandurag Bayaji Kolekar and not as Pandurang Taukaram Kolekar since year 1984. No doubt, during the pendency of this suit while seeking of adjournment, defendant Pandurang had filed an application below Exh.11 and annexed copy of Invitation Card of marriage of his son Annasaheb Pandurang Kolekar which was proposed to be held on 15.07.2018. In the said Invitation Card, the name of father of the bridegroom i.e. defendant is mentioned as Pandurang Bayaji Kolekar. It is interesting to note here that the said document wherein the name of defendant is mentioned as Pandurang Bayaji Kolekar would not be the valid document at this stage. On the contrary the record itself shows that the properties were standing in the name of plaintiff and his deceased brother Tukaram for 1/2 share each since long till 2017.

(15) In this situation, the name of defendant appears to be entered in the record of the rights by virtue of his application given before Tahsildar. On the basis of the said adoption deed, the Tahsildar appears have directed to enter the name of defendant in the record of

rights of the suit properties. Plaintiff, by way of this suit has sought the declaration in respect of the said adoption deed. Whether said adoption deed is legal or proper or whether the effect was given thereof to the record of rights of the disputed lands, to be decided on merits of the suit.

(16) However, at the same time, the apprehension of plaintiff that by taking undue advantage of his name entered in the record of rights, he may alienate or dispose of the suit property to third person cannot be ruled out. In my considered opinion, such alienation or creation of third party interest in the suit property till the final decision of this suit would unnecessarily create multiplicity of proceedings. As a result of this discussion, it is clear that plaintiff has succeeded to show prima facie case in the present suit. The irreparable loss would ultimately cause to the plaintiff if the injunction to the extent of alienation of the suit property is not passed till the final disposal of the suit. Balance of convenience also tilts in favour of the plaintiff to that extent. Resultantly, the application filed by plaintiff deserves to be partly allowed to the extent of alienation or creation of third party interest in the suit properties till the final disposal of the suit. With these observations, I answer point Nos. 1 to 3 partly in the affirmative and pass the following order to answer point No.4.

ORDER.

- 1) Application below Exh. 5 is partly allowed.

2) Defendant is hereby temporarily restrained from alienating the suit properties in any manner or creating third party interest therein, till the final disposed of the suit.

3) Costs in case.

Sd/-xxxx

Date : 14/09/2018.

Place : Kavathe-Mahankal.

(Pravin R. Navale)
Civil Judge Junior Division,
Kavathe-Mahankal.

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

Name of Steno: : Shri. S.B.Joshi. (L.G.)

Court Name: : Shri. Pravin R. Navale,
Civil Judge Junior Division
Kavathe-Mahankal Dist. Sangli.

Date of Dictation : 14/09/2018.

Order signed
by Presiding Officer on : 14/09/2018.

Order uploaded on : 27/09/2018.

