

Order passed below Ex. 5 in Spl. Civil Suit No. 145/2018
[CNR No. : MHSO06-001189-2018]
I.A.No. 10/2019

1. This is an application for the temporary injunction.

2. In nutshell the case of plaintiffs is as follows:-

The plot no.179 adm. 3.71.74 sq. meter in Gat no.18/20/21/108/110/113 situated at Isbavi, Tal. Pandharpur, Dist. Solapur bearing boundaries on the East- plot no.180, on the West- road, on the North- internal road and on the South- plot no.178 and one another land bearing Gat no.164/1/A/1, adm. 82+4 R bearing boundaries on the East- Gat no.163, on the West- Gat no.165, on the North- road and on the South- Gat no.164 situated at Majue Kauthali, Tal. Pandharpur are the suit properties. The plaintiff is the son of deceased Bajirao, who died in the year 2000. While the defendant no.1 is the daughter of Bajirao. She married before 1985. The defendant no.1 has relinquished her rights in the suit properties by oral relinquishment deed. But, she filed R.T.S. Appeal no. 188/2018 and obtained order dated 20.08.2018 that she is entitled to $\frac{1}{2}$ share in the suit property. Therefore, as she is trying to alienate her $\frac{1}{2}$ share, the plaintiff has asked her for partition and to accept $\frac{1}{4}$ th share. She refused for the same. Therefore, the present suit is filed for partition and separate possession.

3. The defendant no.1 has filed her say vide Exh.26. She has denied material pleadings in the plaint. It is specifically submitted that there is no cause of action to the suit, as she did not meet the plaintiff on 25.10.2018. It is specifically submitted that she is the legal heir and entitled to $\frac{1}{2}$ share. But, the plaintiff has suppressed this fact and filed false affidavit and mutated his name in revenue record. Therefore, she

filed R.T.S. no. 342/2017, which is decided on 20.09.2018. Her appeal was allowed. Against said order, the plaintiff filed appeal at Solapur but same is also rejected.

4. There are other joint family properties like Gat no.165/1, 673/2/A, 673/2/F situated at Mauje Kauthali, Tal. Pandharpur which are not mentioned in the suit. Therefore, there is bar to the suit. The defendant no.1 never said that she is going to alienate her share. Hence, the application be rejected.

5. Considering above facts, following points arise for determination and findings are recorded on them for reasons stated below it.

<u>Points</u>	<u>Findings</u>
1. Whether the plaintiff has made out prima facie case ?	No.
2. Whether balance of convenience lies in favour of the plaintiff ?	No.
3. Whether the plaintiff will suffer an irreparable loss, if injunction is refused ?	No.
4. What order?	The application stands rejected.

REASONS

As to Point Nos.1 to 4:

6. The learned advocate for the plaintiff submitted that if third party interest is created, then there will be multiplicity of the proceedings. It is also submitted that the defendant no.1 has relinquished her share, therefore now she cannot ask for the share. Perused the written notes of arguments vide Exh.35. Per contra, the learned advocate for the defendant

no.1 submitted that the plaintiff is blowing hot and cold on the material points. The pleadings in the plaint are self contradictory. He also submitted that the conduct of plaintiff is inequitable. Hence, temporary injunction cannot be granted.

7. Admitted facts should be considered before appreciating the prima facie case. The plaintiff and defendant no.1 are admittedly brother and sister. Admittedly, the suit properties are joint family properties. Admittedly their parents are dead. Admittedly the defendant no.1 challenged the revenue entries in favour of the plaintiff and her R.T.S. appeal is allowed.

8. The plaintiff has filed 7/12 extracts of the suit properties on the record. Prima facie those are substantiating that the suit properties are joint properties. The copy of order of S.D.O. is filed on the record. As per said order when the mutation entry of legal heirs of deceased Bajirao is considered, the plaintiff filed affidavit dated 28.02.2013 that he is the only legal heir. Therefore, Talathi has taken said entry, without local inquiry. Therefore, there being no relinquishment deed, the entry of name of defendant no.1 was directed in revenue appeal. Hence, it is clear that the plaintiff has filed such affidavit before revenue authority.

9. Prima facie on perusal of affidavit filed by the plaintiff before Talathi, it is clear that he has submitted that he is the only heir of deceased Bajirao. This is not correct position as admittedly the defendant no.1 is his real sister. Prima facie he has suppressed said fact and stated falsely before said revenue authority that he is the only heir. It should be noted that it is not stated by him in said affidavit that the defendant no.1 has relinquished her share in his favour. On the basis of said affidavit Talathi has carried

out the mutations. It is clear from order of S.D.O. that said affidavit is filed by the plaintiff and without proper inquiry Talathi entered his name. Therefore, prima facie considering the said false affidavit S.D.O. has directed to mutate the name of defendant no.1 to the suit property. Hence, this conduct of the plaintiff of submitting prima facie false affidavit and obtaining the order behind the back of the defendant no.1 is itself sufficient to discard the equitable relief.

10. It is settled law that the conduct of plaintiff should be equitable in order to claim equitable relief. The law on this point is laid down in “**Kanchusthabam Satyanarayana Vs. Namuduri Atchutaramayya** 2005 SCC (11) 109, 2005 Supreme (2) 257, “...*The grant of discretionary relief such as injunction being in the nature of equitable relief must be granted inter-alia on considerations of equity and justice, and the Appellant who is himself guilty of inequitable conduct cannot claim such relief...*”. Hence, irrespective of other facts, there is legal bar to grant temporary injunction, when the plaintiff is guilty of inequitable conduct.

11. Prima facie even pleadings in the plaint are self contradictory. In the one breath the plaintiff has alleged that the defendant no.1 has relinquished her share and in another breath he has stated that he asked defendant no.1 to get her 1/4th share in partition. If there is any relinquishment as alleged, then there is no question of partition. Secondly, the relinquishment is stated to be oral and word 'deed' is also used. But, neither any such deed is there, nor it is registered. As per Registration Act Section 17(b) any relinquishment deed should be registered. Hence, prima facie these inconsistent pleadings are substantiating the inequitable conduct of the plaintiff and lack of prima facie case. Prima facie such

inconsistent pleadings are also not acceptable.

12. Prima facie nothing is mentioned about with whom and when defendant no.1 agreed or about to create third party interest. Pleadings in that regard are vague. Secondly, in the written notes of argument on the behalf of the plaintiff vide Exh.35, it is stated that whether there is cause of action, or whether all the properties are not joined in common hotch potch can be decided after trial. But, the legal position is otherwise. Prima facie even for temporary injunction both cause of action should be there and all the properties should also be joined in common hotch potch, when suit is for partition. The defendant no.1 in her written statement has specifically stated vide Exh.26 para no.7 that Gat no.165/1, 673/2A, 673/2F are not joined as subject matter of suit. Prima facie when there is such specific defence, it should be at least prima facie shown that all the properties are joined in common hotch potch. As per law, the suit for partition is not legally maintainable without joining all the joint properties in common hotch potch. Hence, when there is specific defence of the defendant no.1 stating specific other properties as joint properties, mere vague statement that it can be decided at time of trial is not sufficient. Hence, on this count also the application is not maintainable.

13. As far as third party interest is concerned, even if it is created for sake of an argument, there is protection under Section 52 of Transfer of Property Act. Prima facie there is suppression in the plaint regarding filing of said affidavit and taking mutations behind the back of the defendant. Hence, the plaintiff has failed to show prima facie case. Merely because, there is no partition, no temporary injunction can be granted in such circumstances.

14. The plaintiff has relied upon authorities in “**Ramdas Chimna Vs. Pralhad Deorao and Ors. [1965 AIR (Bom.) 74]**” on the point that there can be oral relinquishment. The said case can be distinguished on facts that there was already partition in said matter and secondly there was no case of any relinquishment deed as alleged in the present case by the plaintiff. The other authorities in “**State of Maharashtra and others Vs. Admane Anita Motu and others [AIR 1995 SUPREME COURT 350], Sunil Madanlal Agrawal Vs. Jawaharlal Nandlal Chittarke & Anr. [2012 (7) ALL MR 179], Sunil Madanlal Agrawal Vs. Jawaharlal Nandlal Chittarke & Anr. [2012(7) ALL MR 179]**” relied upon by learned advocate for the plaintiff can be easily distinguished on the count of the inequitable conduct of the plaintiff and suppressions of facts etc..

15. Hence, points Nos.1 to 3 are answered in the negative and for point No.4, following order is passed.

ORDER

1. Application exh.5 stands rejected.
2. No order as to costs.

Date: 25.09.2019.

(M. R. Jadhav)
Jt. Civil Judge, Senior Division,
Pandharpur.

CERTIFICATE

I affirm that, the contents of this PDF file order are same word to word, as per the original order.

Name of Stenographer : A.K. Vibhute

*Court : Jt.Civil Judge Senior Division
Pandharpur*

Date : 25.09.2019.

*Order signed by the
Presiding Officer on : 25.09.2019.*

Order uploaded on : 26.09.2019.