

ORDER BELOW EXH.5
IN
Reg.Civil Suit No. 80 of 2022
(CNR No.MHSO06-0014272022)

1] This an application for temporary injunction.

In brief the case of plaintiffs' is as follows:

2] Plaintiffs have suit property i.e. House No.123 and 124, new municipal House No.1324, admeasuring 46.2 sq.mtr. bearing boundaries as shown in the plaint. The great grandfather of both plaintiffs namely Dnaynoba died in year 1949. He divided properties between his five sons. The suit property was given to the grandfather of the plaintiffs No.1 and 2. The father of plaintiffs as well as their uncles used to possess the suit property. The father of plaintiffs was not intimating them about business relating to joint family properties. On 26.09.1994 the father of both plaintiffs died. Plaintiffs came to know about execution of the gift deed and its copy in February 2022 that their father and uncle executed a gift deed of the suit property in favour of defendants. It was joint family property. So, they had no right to execute a gift deed. Plaintiffs have share in the property of gift deed. Now, defendants are trying to construct a community temple over the suit property by destroying previous temple on it. While doing so they are encroaching on the suit property. After obtaining plan and map of the construction, it is clear that defendants are constructing on 100.52 sq.mtr. area which is more than suit property. Therefore, the suit is filed to claim declaration that gift deed executed on 25.07.1991 is void and for recovery of possession.

3] The defendant No.2 filed written statement vide Exh.26. It has denied material contentions in the plaint. It is specifically

submitted that by virtue of a registered gift deed the suit property was given to defendants. It is admeasuring 46.2 sq.mtr. Plaintiffs know about said gift deed. They have mentioned wrong boundaries of the suit property. As matter is of public welfare, the construction of community temple has been completed after obtaining government permission. Plaintiffs have withdrawn such previous suit at Sangola. Therefore, the application be rejected.

4] Heard both the learned advocates.

5] Perused the record.

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

Sr.No.	<u>Points</u>	<u>Findings</u>
1.	Whether plaintiffs have made out prima facie case ?	No
2.	Whether balance of convenience lies in favour of plaintiffs?	No
3.	Whether plaintiffs will suffer an irreparable loss, if injunction is refused?	No
4.	What order?	As per final order

= R E A S O N S =

AS TO POINTS No.1 to 4:-

7] It is argued by learned advocate for plaintiffs that as property is ancestral, gift deed is void. So also, he contended that as area of suit property is 46.2 as mentioned in gift deed defendants cannot construct over more than 100 sq.mtr. area. The learned

advocate for the defendants submitted that claim is barred by limitation. The possession is claimed in plaint. So, the application is not maintainable.

8] The relationship between the plaintiffs and the executors gift deed is admitted. The execution of gift deed by father and uncle of plaintiffs is also admitted fact. It is executed on 25.07.1991 is also not disputed. The delivery of possession is admitted.

9] Plaintiffs have filed the property card. It is not disputed document. The property card of the suit property shows the name of the family members of plaintiffs. Prima facie these documents are admitted as both parties unequivocally admitted that before gift deed, ancestors of plaintiffs were the owners of the suit property.

10] The complaint to District Collector is filed by plaintiffs. In said complaint it is admitted position that the suit property was gifted to Nagar Palika for constructing community temple for meetings and programmes etc. The existence of previous community temple on it is also admitted. The complaint is regarding going on construction on the count that defendants are carrying out encroachment. The similar complaint is also filed to police station. The copy of plan prima facie shows that more than 100 sq.mtr. construction is to be carried out. The photos of construction are also filed.

11] Defendants have filed photographs of construction being already completed on the spot. Plaintiffs have filed documents i.e. R.T.I queries and answer about same other properties than the suit property. Those are about three properties.

12] The plaintiff has filed receipt and tax assessment of house No.1324/b on the record. Anandrao, Vishnu and Digambar are shown as owners in the same. Prima facie plaintiffs have neither joined said persons, nor joined all of their legal heirs. Plaintiffs are claiming the suit property to be inherited as joint family property. In plaint para No.4 also, it is stated that the father of plaintiffs and their other brothers i.e. uncles were in possession of the suit property. Neither said uncles nor their children are joined to the present suit for claiming the declaration and recovery of possession. Prima facie those are necessary parties to the suit, as it is clearly not case of plaintiffs that only both of them are exclusive owners of the suit property. Therefore, on the ground of non joinder of necessary parties itself, prima faice the suit as well as this application are not maintainable.

13] Prima facie the admitted gift deed has been executed by father and uncles of plaintiffs on 25.07.1991. It is admitted position that possession has been delivered to defendants by virtue of gift deed at that time only. Therefore, now plaintiffs are claiming declaration regarding said gift deed after more than 30 years. As per Article 109 of the Limitation Act, even if the sale of joint property by Karta is to be challenged, same should be done within 12 years of delivery of possession. In this case, said period has clearly expired. Therefore, on the face of it, the suit is itself clearly barred by the limitation. Prima facie neither declaration as claimed can be granted, nor recovery of possession can be ordered as both claims are bared by limitation. It is also pertinent to note that neither the father of the plaintiffs nor uncles or other heirs have not challenged the gift deed since long time. This itself prima facie shows that all of them had knowledge as well as it was admitted gift deed. Prima facie, when

possession is also delivered in year 1991, plaintiffs are also having knowledge of all said facts. The age of plaintiffs is itself of 67 years and 63 years. So, prima facie pleadings of ignorance of said gift deed are itself not acceptable. Hence, the suit is prima facie hopelessly barred by the limitation.

14] Prima facie in para No.7 it is clearly stated that neither plaintiffs nor other interest holders consented to said gift deed. Therefore, those pleadings also make it clear that even interest is alleged to exist in other third party, who are not joined to the present suit.

15] Prima facie in this matter delivery of possession to defendants is admitted and plaintiffs have claimed recovery of possession. Admittedly, temple was lying on the suit property since many years old temple has been destroyed and defendants are constructing the new temple. Therefore, said long possession of defendants cannot be disturbed by plaintiffs, when plaintiffs are claiming recovery of possession. There is no question of granting temporary injunction so as not to construct temple on the suit property. The relief in the main suit is of recovery of possession. While the relief vide Exh.5 is not to construct and not to disturb the possession of plaintiffs. Therefore, even the interim relief is inconsistent with the main relief. Hence, prima facie on this ground also, the application is not maintainable.

16] Prima facie the alleged act of constructing the new temple at the place of old demolished temple on the site by defendants is a public project. It is an infrastructure project for social and commercial purposes. Therefore, by virtue of Section 41 (h)(a) of

the Specific Relief Act an injunction as claimed cannot be granted. Prima facie, even the photograph filed by defendants show that the construction has already completed. Defendants have even field pursis vide Exh.23 to that effect. Therefore, T.I. application is itself infructuous and liable to be rejected.

17] As far as alleged claim of constructing more than suit property or encroachment upon any property, there is no Government measurement carried out by plaintiffs before filing the suit. Therefore, even said claim cannot be accepted when defendants are admittedly in possession and carrying out public project. On basis of such vague pleas, no injunction can be granted. The balance of convenience lies in favour of defendants, who are carrying out work of public project. They will suffer irreparable loss if any injunction is granted to their settled possession since 30 years. Plaintiffs are neither exclusive owners, nor in possession of the suit property. So, prima facie case is not in their favour, nor balance of convenience lies in their favour. They shall not suffer any irreparable loss. Hence, I answer points no.1 to 3 in the negative and in answer to point No.4 pass following order.

ORDER

The application is rejected.

Place- Pandharpur
Date:- 12.01.2023

Civil Judge Senior Division,
Pandharpur

CERTIFICATE

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

Name of Stenographer : B.R.Kondekar
Court Name : Civil Court Senior Division, Pandharpur
Date 12-01-2023

Order/Judgment signed
by the Presiding Officer on : 12-01-2023

Order uploaded on : 13-01-2023