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RCS No.272/2019

I.A. No.02/2021

Hanmant Pawar Vs. Bhimrao Pawar &
others

ORDER BELOW EXHIBIT-70

(Passed on 08.12.2021)

This is an application filed by defendant No.1 and 2 under order 39 Rule 1 and 2 of the Civil Procedure Code for grant of temporary injunction.

2. It is contended by the defendant No.1 and 2 that, plaintiff has filed suit for partition and separate possession against the defendant No.1 to 12. The suit property mentioned in para No.1 of the plaint situated at village Khedbhose Ta. Pandharpur bearing Gat No.447, 247/1/अ/1 is purchased by plaintiff, defendant no.1 and 2. The property Gat No.305 is ancestral property. The area of suit property bearing Gat No.447 is up to 0.30R land and same is purchased by defendant No.2 and he has taken the crop the sugar cane in the same. In the same gat number area of 0.12 R is owned and possessed by defendant No.2. He has taken the sugarcane crop in the same. In the same gat number towards Eastern side 0.12 R land is owned and possessed by defendant No.1 and in the said land there is crop of sugarcane. It is further contention of the defendants that, the suit property situated at village Khedbhose bearing Gat No.274/1/अ/१ is purchased by plaintiff and defendants adm. 60R. land and in the same gat number defendant No.1 has taken crop of sugarcane. The sugarcane crop which is in the suit properties is ready for harvesting and is required to be transport to the sugar factory. The defendants have also contended that, in Gat

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No.274/1/ब/1 adm. 60R. land is possessed by defendant No.2 and having sugarcane crop in the same. So also, in the agricultural land 305 adm 40R. land same is possessed by defendant No.2 and he has taken crop of sugarcane. In short, it is the contention of the defendants that, the suit property bearing Gat No.447, 274/1 अ/१, 274/1 ब/1, 305 is situated at village Bhoose and suit property bearing Gat No.1280/1 अ/5 situated at Shevte, property bearing Gat No.324/1/ब situated at village Shevte, all above properties are owned and separately possessed by the defendant No.1 & 2 having crop of sugarcane and same is ready for harvesting. Therefore, the defendant No.1 and 2 approaches to the sugar factory for taking the said crops. But, plaintiff and his son are restrained the defendants to cut the sugarcane and supply the same to sugar factory. Therefore, circumstances constrained the defendant No.1 and 2 to file the present application for temporary injunction against the plaintiff. Hence, they are prayed to allow the application.

3. Plaintiff by filing his say below Exh.74 has strongly opposed to the present application and denied the contents of application. It is the contention of the plaintiff that, defendant No.1 and 2 are trying to provide the sugarcane to the sugar factory in the name of another persons and it will cause great financial loss to the plaintiff. It is further contention of the plaintiff that, he has filed suit for partition and separate possession along with mesne profit. But, defendants are without any just and proper reason trying to supply the sugar cane to the sugar factory in the name of their relatives. The suit properties are joint Hindu family ancestral properties. There is no any partition effected between the plaintiff and

defendants. It is settled law that coparcener cannot seeks injunction against other coparcener. But, the present application filed by the defendants is not tenable in eye of law. Defendants are trying to avoid the share of plaintiff in the suit property and they are trying to encroach upon the rights of plaintiff. Defendants not come to the court with clean hands. Plaintiff never restrained the defendants to supply the sugarcane to sugar factory. It is contended by the plaintiff that, necessary directions may kindly be issued to the defendants for production of sugar factory bills in the suit in respect of sugarcane crop provided to the sugar factory. The plaintiff has filed complaint with the sugar factory that, defendants are trying to supply sugar cane to the factory in the name of another. Therefore, the sugar factory namely Vitthalrao Shinde Co-operative sugar factory Unit No.2 Karkam has stopped to take the crops of sugar cane from the defendants. The application filed by the defendants is not tenable. Therefore, plaintiff prayed to reject the application.

4. Perused the application and say filed by the plaintiff. Heard both the sides. Perused the documents filed on record on the basis of which following points arise for my determination and I have recorded my findings with reasons thereon as under.

POINTS

FINDINGS

- | | |
|--|-----------------|
| 1- Whether defendant No.1 & 2 prove their prima facie case ? | In the negative |
| 2- Whether balance of convenience lies in favour of defendants ? | In the negative |

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3- Whether an irreparable loss will be caused to the defendant No.1 and 2, if an injunction is not granted ? In the negative.

4- What order ? As per final order.

REASONS

AS TO POINT No.1

5. The defendant No.1 and 2 have come with the case that, the property situated in Gat No. 447, 274/1/अ/1, 274/1 ब/1, 305 and the property bearing Gat No.1280/1 अ/5 situated at Shevte, Gat No.324/1/ब is owned and separately possessed by the defendant No.1 and 2. The area which is in their possession of above suit properties is mentioned by the defendants in their the present application. It is their contention that, the plaintiff and his son are obstructed the defendants to supply the sugar-cane crop to the sugar factory and it will cause great financial loss to the defendants. It is further case of the defendants that, partition is already effected between the plaintiff and defendants and they are cultivating their separate share in the suit properties. The plaintiff is not concerned with the above suit properties. On the other hand, the defence taken by the plaintiff is that, there is no any partition effected between the plaintiff and defendants by meets and bounds. The defendants are trying to supply the sugar-cane crop in the name of their relatives to the sugar factory and very purpose of the suit will be frustrated. Therefore, plaintiff prayed to dismiss the temporary injunction application with direction to defendants to produce the bill of sugar cane crop supplied to the sugar factory.

6. Considering the rival contentions of both the sides and I have gone through the contents of present application, from it appear that, the defendant No.1 and 2 contended that, the property bearing Gat No.447 & 274/1/अ/1, is purchased by the plaintiff, defendant No.1 and 2. The property bearing Gat No.305 is ancestral property and property Gat No.447 is self acquired property of the defendant No.2. But, it is pertinent to note that, defendant No.1 and 2 have not pleaded their source of income for purchasing the suit properties in their name. The contents of application itself goes to show that, suit properties are jointly owned and possessed by the plaintiff, defendant No.1 and 2. In the present case the plaintiff has filed the 7/12 extract and mutation entries of the suit properties as per list of document Exh.4. From it appears that, the name of plaintiff is mentioned in the holders column to the 7/12 extract of the property bearing No.274/1/अ/1 and said portion is appears to be jointly possessed by the plaintiff and defendant No.1. I have also perused the 7/12 extract of property bearing Gat No.274/1/अ/1 which is standing in the name of defendant No.2 and defendant No.3. The 7/12 extract of the gat No.447 goes to show that, the area of 62 R land is jointly possessed by the plaintiff and defendants.

7. The 7/12 extract of suit property bearing Gat No.305 is standing in the name of plaintiff and defendants. The property situated at village Shevte bearing Gat No.324/1/अ is also standing in the name of plaintiff and defendant No.1 and the Gat No. 1280/1 अ/5 situated at village Bhose is standing in the name of one Bhima Bhagawan Shelke. In short the 7/12 extracts of the suit properties is goes to show that, the names of plaintiff and

defendants are recorded to the record of rights of the suit property as a joint owners.

8. The defendant No.1 and 2 have contended that, there is partition effected between the plaintiff and defendants in the year 1988 and mutation entry bearing No.1976 is recorded to the record of rights. The partition is effected as per the Section 85 of the Maharashtra Land Revenue Code before the Tahasildar and the documents in respect of the same is filed below list of document Exh.4. I have gone through the certified copy of mutation entry No.1976 from it appears that, there is partition effected between the Bhima Shelke, Hanmant Shelke, Bharat Shelke, Gulab Shelke, Satyawar Shelke in respect of property bearing Gat No.1280. But, there is no any document in respect of partition of remaining suit properties is filed on record. Therefore, the documentary evidence in form of 7/12 extract and pleadings of the parties goes to show that, there is no any partition effected by meets and bounds between the plaintiff and defendants.

9. The learned Advocate for the plaintiff has relied upon the case laws of Hon'ble supreme Court reported in 2002 (1) All M.R. (S.C. S.N.) 58 Sakhari Parwatrao Karahale and anr. Vs. Bhimashankar Parwatrao Karahale. In which the Hon'ble supreme court held that, if the partition is not proved then injunction cannot be granted to a co sharer even if he is in exclusive possession. Considering the above precedent laid down by the Hon'ble Apex Court, it is clear that, the co sharer cannot seek injunction against the other co sharer without proving the partition.

10. In the present case in hand there is no any documentary evidence filed on record by the defendant No.1 and 2 to show that, there is partition effected in respect of suit properties between the plaintiff and defendants. On the contrary the defendant No.1 and 2 have come with the case that, the suit properties are purchased by plaintiff and defendant No.1 and 2 in their names. They have also not pleaded in their written statement about the division of purchased land between the plaintiff and defendant No.1 and 2. Therefore, in absence of prima facie evidence in respect of partition and separate possession in respect of property it is unsafe to hold that, defendant No.1 and 2 are separately possessed the suit properties mentioned in the present application.

11. In the present case the learned Advocate for the defendant No.1 and 2 have relied upon the case law of Hon'ble Panjab and Haryana High Court Dalip Sing VS. Surindar Jain in which Hon'ble High Court held that, *if by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.*

Considering the above observations of the Hon'ble Panjab and Haryana High Court and facts of the present case in hand. In the present case in hand, the defendant No.1 and 2 have come with the case that, they are owned and possessed the suit properties separately. But, the documents of the suit properties goes to show that they are in joint possession with the plaintiff. The plaintiff has contended that he has never restrained to the defendants from

supplying the sugarcane crop to the sugar factory. But, he has alleged that, defendants have supplied the sugarcane crop in the name of another persons. Therefore, the value and utility of property is diminished by the plaintiff is not came on record. Therefore, the above case law is not helpful to the defendant.

12. The learned advocate for the defendants has also relied upon the case law of Panjab and Haryana High Court Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram and Others in which Hon'ble High Court held that, principle is well settled that, *in granting or with holding an injunction the courts exercise a judicial desecrating weigh the amount of substantial mischief done or threatened to the plaintiff and compare it with that, with the injunction, after granted, would inflict upon the defendants. But, we are not aware of any decision which establishes the broad proposition contended for by the plaintiffs that one co-owner is entitled to an injunction restraining another co-owner from the exceeding his rights absolutely, and without reference to the amount of damage to be sustained by the one side or the other from granting or withholding of the injunction.*

Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co owner, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.

In the above case law the Hon'ble High Court has observed that, if the co-owners consented to other co-owner in respect of separate parcels under an arrangement it is not open to any one to disturb

the arrangement without the consent of others. In the present case in hand it is not a case of the defendant No.1 and 2 that, they are separately possessed their share with the consent of each other. So also they have not filed any documentary evidence to show that how the properties are divided between them. On the contrary the record of suit properties goes to show that, they are jointly possessed the suit properties. Therefore, facts of cited case laws and facts of present case in hand are distinguishable with each other.

13. Considering the documentary evidence in form of 7/12 extract and mutation entries prima facie goes to show that, plaintiff, defendant No.1 and 2 have jointly purchased and possessed suit properties. Prima facie there is no any partition effected between the parties. Therefore, one coparcener cannot seek injunction against coparcener. Considering the above discussion and documentary evidence on record goes to show that, defendant No.1 and 2 having no any prima facie case. Hence, I answer point No.1 in the negative.

AS TO POINT No.2 AND 3

14. While answering point No.1 in the negative this court has come to the conclusion that, prima facie there is not any documentary evidence on record to show that, there is partition effected between the plaintiff and defendants in respect of properties mentioned in the present application. Therefore, the sugar-cane crops in the suit property is jointly owned by the plaintiff and defendants. The plaintiff has contended that, defendants without his consent supplied the sugar-cane crop to the sugar factory in the name of their relatives. The act of defendants is goes

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to show that, they have supplied the sugar-cane standing in the suit properties to the sugar factory without the consent of plaintiff. Therefore, the balance of convenience is lies in favour of plaintiff rather than defendants. As this court prima facie hold that, the suit properties are jointly owned and possessed by the plaintiff and defendants. Therefore, there is no any question arises for causing any irreparable loss to the defendant No.1 and 2 if injunction is not granted. Hence, I answer point No.2 and 3 in the negative and proceed to pass following order.

ORDER

Application Exhibit-70 is hereby rejected.

Date:- 08.12.2021.

(A.P.Karad.),
Jt. Civil Judge, J.D., Pandharpur.

Certificate

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

Name of Stenographer : **Rajiv M. Gogi.**
Court Name : Jt. Civil Judge, J.D. Pandharpur.
Date : 08.12.2021
Order signed by the
presiding officer on : 08.12.2021
Order uploaded on : 09.12.2021