

ORDER BELOW EXHIBIT-638 IN R.C.S.No.442 of 1978

Plaintiff has filed this application seeking injunction and directing defendant No. 20 from measuring and sub dividing Gat No. 995 and 997 and from alienating suit properties.

2. Plaintiff stated that, the suit is of partition and declaration with respect to Gat No. 995 & 997. Defendant No. 6 Shivaji Barangule without any legal authority and during pendency of the suit sold suit property to defendant No. 20 and others. Accordingly, name of Jahangir Yakub Bagwan defendant No. 20 has been registered in revenue records. On the basis of the said entry defendant No. 20 is measuring and sub dividing the suit property despite knowledge of pendency of the suit. On the above knowledge plaintiff moved objection application on 11/02/2021 to T.I.L.R. Barshi and Pune.

3. Plaintiff has acquired knowledge that, on 20/07/2021 measurement was going to be conducted as they have received notices. In the said notice MR No. 280 & 4957 measurement of gat number of suit property is mentioned. Due to which, plaintiff again moved objection applications to the relevant offices but the officers in collusion with the defendant are proceeding to conduct the measurement and sub division. Under such circumstances plaintiff will suffer irreparable loss. Hence, prayed for injunction against the act of measurement and sub division.

4. Defendant No. 20 Jahangir Bawan filed his say vide

Exh. 643 and denied the contents of the application. It is contended that, the application is barred by the principle of estoppel by deed, estoppel by conduct, estoppel by deed of record and suppression of material facts. It is also contended that, plaintiff has not come with clean hands. Balance of convenience is in his favour. Hence, prayed for rejection of the application.

5. Defendant No. 20 has purchased the property from the owner i.e. defendant No. 6 Shivaji and Shahaji Dagdu Barangule and accordingly defendant No. 14 to 20 has been in possession as owners. Due to which applicant/plaintiff has no concern with the property purchased by the defendant No. 20. Earlier, objection application by the plaintiff has been rejected by the concerned offices and he has not challenged and filed appeal on the said decisions. The above facts has been suppressed by the plaintiff. Due to which, plaintiff can not seek remedy as injunction which is based on equity. Also during the pendency of the suit applicant/plaintiff, his father, brothers, sisters have sold major portion of suit properties to Malwade, Jadhav, More, Prakash Gund, Manohar Patil. The said facts has been intentionally concealed by the plaintiff. In the year 2007 plaintiff has sold OH 61R from Gat No. 995 vide sale deed number 3591/2007 to Dhanaji Ang Tupe and conducted measurement vide M.R. No. 95/2007 and fixed the boundaries. Further, Dhanaji Tupe developed N.A. Plots and sold to various purchasers. This facts are also been suppressed by the plaintiff.

6. The ancestors of the suit property Shahaji and

Shivaji Barangule and Narsing Trimbik Barangule were having half share. All the co-sharers being in possession of the respective shares have enjoyed, disposed off, alienated as per their separate share. Due to which, there is no question of loss or deprivation of right of any party.

7. Therefore, defendant prayed that, considering the above facts, prima facie case and balance of convenience is not in the plaintiffs favour. The application is false vexatious. Hence, prayed for the rejection of the application along with cost of Rs. 15,000/-.

8. Perused the application and documents on record, it prima facie reveals that, earlier ancestors Shahaji, Shivaji & Narsing were having half share in the suit property. All the concerned co-sharers being in possession of their respective shares have enjoyed, alienated, disposed off their respective shares as per their convenience during the pendency of the suit. Due to which, they cannot restrict other co-sharers from alienating their respective shares. As they themselves have done so.

9. On perusal of the documents it prima facie reveals that, earlier, objection application by the plaintiff were rejected by the concerned offices and he has not challenged and filed appeal on the said decisions. The above facts has been suppressed by the plaintiff. Due to which, plaintiff can not seek remedy as injunction is a remedy on principle of equity. Also during the pendency of the suit applicant/plaintiff, his father, brothers, sisters have sold major portion of suit properties to

Malwade, Jadhav, More, Prakash Gund, Manohar Patil. The said facts has been intentionally concealed by the plaintiff. In the year 2007 plaintiff has sold OH 61R from Gat No. 995 vide sale deed number 3591/2007 to Dhanaji Ang Tupe and conducted measurement vide M.R. No. 95/2007 and fixed the boundaries. Further, Dhanaji Tupe developed N.A. Plots and sold to various purchasers. The above alienations can be ascertained from the documents and mutation entries filed on record vide Exh. 646 at serial Number 14 to 27. The said facts have also not been stated by the plaintiff.

10. The ancestors of the suit property Shahaji and Shivaji Barangule and Narsing Trimbik Barangule were having half share. All the co-sharers being in possession of the respective shares have enjoyed, disposed off, alienated as per their separate share. Due to which, there is no question of loss or deprivation of right of any party. Plaintiff in his application has prayed for injunction restricting the measurement and sub division resulted by the proposed measurement. However, plaintiff and their relatives have themselves earlier sub divided their respective shares prior to partition or the decision of the suit. Therefore, the plaintiff is seeking injunction against the act which he himself has done earlier.

11. Relief of injunction is an equitable relief. The person seeking relief of injunction must come in the Court with clean hands. As discussed above plaintiff has suppressed many facts which are detrimental to him and has sought for injunction against the defendants by concerning their acts or

deeds of various alienations with respect to the suit property during the pendency of the suit. Under such circumstances the balance of convenience does not seem to be in the favour of plaintiff. Hence, considering the above facts I am of the opinion that, application deserves to be rejected. Accordingly I pass the following order:-

ORDER

Application is hereby rejected.

Date : 20.09.2021.

Sd/-
(J. A. Zari)
Jt. Civil Judge (J.D.),
Barshi.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order

(a)	Name of the Stenographer	:	B.B.Salvade
(b)	Court	:	J.A.Zari, Jt.C.J.J.D.&J.M.F.C. Barshi.
(c)	Judgment /Order signed by P.O. on	:	20/09/2021
(d)	Judgment /Order uploaded on	:	20/09/2021