

Hirabai B. Khandekar ::::: *Plaintiff.*
V/s.
Vasant B. Khandekar etc. ::::: *Defendants.*

02] According to plaintiff the suit properties are joint family and ancestral properties of plaintiff and defendant No.01 to 08 having their undivided shares. Same are not yet partitioned. Plaintiff has her 1/5th share in the suit properties. Thus, to sever her share she bought suit for partition. It is further case of plaintiff that she had previously filed a suit bearing R.C.S. No.571/2002. Wherein, defendant No.01 & 02 have denied her share. Against decree in said suit, plaintiff had preferred an appeal bearing R.C.A. No.120/07. Despite *status-quo* order in appeal, on 09/06/2009 defendant No.01 & 02 had executed a notarized agreement of sale in favor of defendant No.09 & 10. In consequent defendant No.01 & 02 had further executed sale dated 03/11/2012. Thus, plaintiff sought declaration against sale deed that same is not binding upon her. It is case of plaintiff that defendant No.09 & 10 are trying to disturb her possession. Plaintiff has preferential right to purchase share sold to defendant No. 09 & 10. Thus, plaintiff has filed suit and present application as indicated

above.

03] Defendant No.09 & 10 have filed their written statement and denied suit claim and application of plaintiff in toto, *inter-alia* on the grounds that plaintiff has suppressed material facts and filed fabricated suit to mislead Court and to obtain order to oust defendants from City Survey No.2790 and 2791 which they have lawfully purchased. It is their clear case that in the previous suit, the relief of declaration regarding ownership of City Survey No.2790 and 2791 was dismissed. In that suit it was proved that plaintiff had relinquished her share from City Survey No.2790 & 2791. Thus, present suit is barred by principle of *res-judicata*. The plaintiff has no right to seek any relief against present defendants who are lawful and bonafide purchasers of City Survey No.2790 & 2791 for value. Thus, according to them plaintiff has no *locus-standi* to file suit and to claim any relief against sale deed of defendants. They further contended that plaintiff is trying to disturb possession of defendants. Thus, they raised *counter-claim* along with written statement to restrain plaintiff from disturbing possession of defendants with compensatory costs. It is also contended that plaintiff has withdrawn appeal filed against decision in R.C.S. No.571/2002. It is also contended that plaintiff has relinquished her share before 2000 and same has been confirmed in the previous decision. Thus, suit is even time-barred and not maintainable. Thus, sought to reject application claiming that plaintiff has no *prima-facie* case.

04] Defendant No.01 filed his *written-statement* Exh.35. He adopted written statement of defendant No.09 & 10 and also specifically pleaded that plaintiff has no right in City Survey No.2790 & 2791. Suit regarding declaration in respect of those properties bearing R.C.S. No.571/2002 have already been dismissed on the basis of relinquishment

by plaintiff. An appeal preferred against said dismissal had been withdrawn by plaintiff. Thus, said decision is confirmed and suit is barred by principle of *res-judicata*. The partition between plaintiff and defendants No.01 & 02 being made before 12 years, present suit is barred by law of limitation. Defendant No.09 & 10 are become absolute owners on the basis of sale deed. Defendant No.09 & 10 were previously tenants in the suit properties City Survey No.2790 & 2791. Their possession came to be confirmed *vide* sale deed. Since then they are in continuous possession and doing business. As such, plaintiff is not owner and possessor of the said properties. Thus, she has no right to claim any partition or declaration. Accordingly, he sought to reject application.

05] I have heard ld. counsel Mr. V.D.Thokade for plaintiff & ld. counsel Mr. C.P.Vishwarupe for the defendants. Having heard both sides at length and having gone through the documents, following points arises for my consideration. I have recorded my findings thereon for the reasons stated thereunder :

SR.NO.	POINTS	FINDINGS
01]	Whether plaintiff has made out <i>prima-facie</i> case?	In the Negative
02]	Whether balance of convenience lies in favor of plaintiff ?	In the Negative
03]	Whether plaintiff suffers irreparable losses, if injunction rejected?	In the Negative.
04]	What order?	AS PER FINAL ORDER

R E A S O N S**AS TO POINT NO.01 TO 04 :**

06] Having heard both sides at length and on carefully going through pleadings on record with documents, their finds material suppressions of facts at the instance of plaintiff. Thus, she is not entitled to claim equitable relief of injunction in any manner.

07] Though plaintiff raised pleadings regarding previous suit, she avoided to describe nature of suit and relief claimed therein. In para 3 of plaint, it is only mentioned that *such previous suit was filed wherein defendants have denied her rights*. In para 4, it is only pleaded that said suit was decided. However, it is not pleaded that what kind of orders were passed. Further it is pleaded that R.C.A. No.120/2007 was preferred. However, it is suppressed that said appeal has been withdrawn. In para 08 again it is pleaded that Hindu Succession Act has been amended in the year 2005. Previous suit being of the year 2002, plaintiff could not seek relief of partition. Thus previous suit was only filed for injunction. Despite such pleadings in para No.3, 4 & 08 of plaint, plaintiff avoided to produce certified copy of judgment or decree passed in R.C.S. No.571/2002 or certified copy of R.C.A. No.120/007. The copy of said judgment and decree and copy of withdrawal of appeal has been only produced on record by the defendants only.

08] Now it is to be seen whether previous suit of plaintiff was only filed for injunction as pleaded. A perusal of copy of decree and judgment filed below Exh.26 and below Exh.38, shows that said suit was filed for declaration and injunction. Plaintiff had sought relief of declaration that she has undivided share and possession in the suit properties. The suit properties in the present suit and that suit are same. The operative order

of said judgment, shows that it was declared that plaintiff and defendant therein have their undivided share only in City Survey No.1539/3. The relief as to the declaration regarding City survey No.2790 & 2791 was came to be dismissed. Against said decision, plaintiff had preferred appeal and same has been withdrawn unconditionally.

09] Thus, one thing is apparent on record that plaintiff has raised false pleadings regarding previous suit. The plaintiff falsely pleaded in para no.8 of suit that in previous suit only relief of injunction was claimed. But she suppressed production of copies of suit. As already observed above previous suit was also filed for declaration. A perusal of copy of judgment again show that specific issue was framed regarding relinquishment of share by plaintiff in City Survey No.2790 & 2791 and affirmative findings has been given. It means plaintiff had already relinquished her share and has no rights in City Survey No.2790 & 2791 which has been sold to defendant No.09 & 10. Even plaintiff has withdrawn her appeal which shows that she has admitted decision of the Court having competent jurisdiction.

10] Nature of present suit and previous suit being same, parties being also same, the relief claimed regarding declaration being also same, present suit regarding declaration is totally barred by principle of *res-judicata*. Plaintiff *prima-facie* has no right to claim any right in City Survey No.2790 & 2791.

11] Further in previous suit, defendant No.01 & 2 have already restrained from creating third party interest in City Survey No.1539/3. As such, relief regarding injunction raised in the present suit and even in the application Exh.5 is also not maintainable. Thus, application of the

plaintiff is totally not maintainable and plaintiff is not entitled to claim any equitable relief of injunction.

12] During arguments, ld. counsel for plaintiff had relied upon various decisions of Bombay High Court and Supreme Court i.e. decision in case ***Brijalal Kolsya Kokani @ another Vs. Poslya Annad @ BUDha Kokani*** reported in ***2009(Supp) Bom.C.R.1030*** regarding registration of relinquishment of deed. Secondly, decision in case ***Ramniklal Amritlal Shah Vs. Bhupendra Implex Pvt. Ltd and others*** reported in ***2002 (2) Bom.C.R.479*** regarding interim relief can be granted without establishing rights. Wherein, it is observed that possibility of succeeding in the suit and balance of convenience is sufficient to grant relief of injunction. Thirdly, ***Dorab Cawasji Warden Vs Coomi Sorab Warden & others*** reported in ***1990 (2) Bom.C.R.614***, wherein provisions of Section 44 of the Transfer of Property Act was considered and it was observed that, in absence of evidence of partition, brothers holding properties deemed to be holding for undivided family and temporary injunction can be granted to restrain stranger. Lastly the decision in case of ***Sajid Ismail Vs. Aairabi Abdul Gaffar Shaikh*** reported in ***2014 (1) Bom.C.R.339*** regarding mutation and its effect on title.

13] With due respect, having gone through the decisions cited above, same have no bearing on the facts in issues. Facts of those cases are totally different then the present case. In the present case mutation entires are not mere entries. Those were taken on the basis of partition and on the basis of previous decision. Thus, the decisions relied upon by plaintiff are not applicable to the present case.

14] Having considered the above facts and circumstances, it is

found that plaintiff has suppressed material facts and not come with clean hand. Even she found to have has no *prima-facie* case. No legal injury will cause to her, if injunction rejected. Accordingly, I answer points under consideration and pass following order.

ORDER

- 1 Application stand rejected.
2. Costs in cause of application.

Date: 03rd October 2015.

(**Sudhir N. Shinde**)
Jt.Civil Judge, Junior Division,
Barshi.

CERTIFICATE

I affirm that the contents of the PDF filed Judgment are same word to word, as per the original Order/Judgment.

Name of Stenographer	: Bhaskar G.B.
Court	: Jt. Civil Judge J. D., Barshi
Date	: 03/10/2015
Order signed the presiding Officer on	: 03/10/2015
Order uploaded on	: 05/10/2015