

ORDER BELOW EXHIBIT-5 IN R.C.S.No.562 of 2016

This application is filed by the plaintiff to restrain defendant Nos.1 to 12 from creating third party interest in land Gat Nos.438, 445, 447/1, 448/1, 448/2, 629/1 , 629/2, 680/1 & 680/2 all situated at Chikharde Taluka Barshi (hereinafter referred to as the suit lands).

2. According to the plaintiff, defendant Nos.1 & 6 are her brothers and defendant Nos.11 & 12 are her sisters. Defendant No.2 is the son of defendant No.1. Defendant No.3 is the wife of defendant No.2 and defendant Nos.4 & 5 are their sons. Defendant No.7 is the wife of defendant No.6 and defendant No.10 is their father. Defendant No.8 is the widow and defendant No.9 is the son of predeceased son of defendant Nos.6 & 7. Maruti Tukaram Bhosale, father of the plaintiff and defendant Nos.1, 6, 11 & 12, was the owner and possessor of suit lands. He died on 05.01.1978. After his death, names of the plaintiff and defendant Nos.1, 6, 11 & 12 and their deceased brother Laxman & mother Yashoda were mutated in the Revenue record vide mutation entry No.276. Thereafter, their mother Yashoda has died. Likewise, their brother Laxman has died issueless.

3. It is further asserted by her that the plaintiff and defendant Nos.1, 6, 11 & 12 were enjoying the fruits of the suit lands as owners thereof. They are having 1/5 share each in the suit lands. Recently, plaintiff has come to know that defendant Nos.1 to 12 are intending to alienate the suit lands. They have earlier also sold some ancestral land. When she has enquired with them, they have told her that they were in need of money

and that the lands sold by them would be adjusted in the family partition and further that they would not create third party interest in future. On 23.06.2016, plaintiff came to know that defendant No.6 is intending to alienate a part of the suit lands and that defendant No.8 has objected the same. Thereafter, she has collected the 7/12 extracts of the suit lands and came to know that the defendants have got sanctioned mutation entry No.1606 behind her back on the basis of S.R.No.286/2000 and partitioned the suit lands between themselves. Plaintiff has, therefore, asked to defendant Nos.1 to 12 to partition the suit lands. However, they have refused to effect the partition and asked her not to enter the suit lands. Plaintiff is an illiterate old woman. She is having apprehension that defendant Nos.1 to 12 may alienate the suit lands by taking undue advantage of the entry of their names in the revenue record. Hence, it is necessary to restrain them from creating third party interest so as to safeguard her valuable rights. If they are not restrained, she would suffer irreparable loss. Hence, the application.

4. Defendant Nos.1, 2, 3, 5, 8 & 9 have filed their say cum written statement (Exh.28) and resisted the application. They have admitted the relation with the plaintiff. They have refuted all the adverse assertions. According to them, Maruti Bhosale has purchased the suit lands on 13.07.1961 vide registered sale-deed bearing number 867/1961 from Prayagbai Masekar & Yashodabai Bhosale. At that time, his three sons and three daughters (all) were minor. He purchased the suit land from his own income and as such suit lands were his self acquired properties. Plaintiff has suppressed this fact. Defendant

Nos.1 & 6 have partitioned the suit lands between them on 16.11.2000 as per Section 85 of the Maharashtra Land Revenue Code. Their names have mutated accordingly vide mutation entry No.1606. Suit lands are in their possession as per the partition. They have improved the quality of the suit lands. Plaintiff and defendant Nos.11 & 12 were aware of the said partition. They have relinquished their respective shares in the suit lands. Considerable amount has been spent at the time of their marriages. They are living happily in their matrimonial homes. Hence, they are not having any right to claim partition of the suit lands. Plaintiff has not pleaded about the transaction entered into by the defendants. 11 Are land of Gat No.68/1 has been converted into N.A. A petrol pump is running on the said land. A school is running on the 41 Are land of Gat No.438. Land Gat No.445 is a tenancy land and hence not available for partition. Land Gat Nos.447/1, 680/1 & 680/2 are the joint family properties and other properties are not ancestral properties of the plaintiff and the defendant. Plaintiff has not included the house property in the suit claim. Suit is without cause of action. Plaintiff has not come to the court with clean hands. Suit is bad for non-joinder of necessary parties. Suit is not maintainable since the plaintiff has not included all the ancestral properties in the common hotch-pot. Ultimately, they have prayed for rejecting the application.

5. Suit proceeded Ex-parte as against defendant Nos.4, 6, 7, 10, 13, 14, 15 & 16 and without written statement as against defendant Nos.11 & 12.

6. Perused the record and proceeding. Heard both the sides. The points that arise for consideration and my findings thereon together with the reasons are as follows -

<u>P O I N T S</u>	<u>F I N D I N G S</u>
1. Whether the plaintiff is having a <i>prima facie</i> case ?	Yes.
2. Whether balance of convenience lies in favour of the plaintiff ?	Yes.
3. Whether the plaintiff will suffer an irreparable loss, if injunction is not granted ?	Yes.
4. What order ?	Application is allowed.

REASONS

AS TO POINT Nos.1 to 3 :-

7. Plaintiff has tendered 7/12 extracts of the suit lands, mutation entry No.1606 and certified copies of the Sale-deeds executed by the defendants.

8. As can be seen from the pleadings of the parties, there is no dispute that the father of the plaintiff and defendant Nos.1, 6, 11 & 12 was the owner of the suit lands. They are his successors. Plaintiff was not a party to S.R.No.286/2000 on the basis of which mutation entry No.1606 was sanctioned and the names of defendants were mutated in the Revenue Record. Share of the plaintiff in the suit lands has not been categorically denied by the contesting defendants. Defendant Nos.4, 6, 7, 10, 11, 12, 13, 14, 15 & 16 have not contested the claim of the plaintiff. Documents filed by the plaintiff would show that the defendants

have alienated certain ancestral properties. Defendant Nos. 1 , 2, 3, 5, 8 & 9 have admitted the said fact in their written statement. In view of the above, apprehension of the plaintiff is not baseless. She has made out a prima-facie case. Balance of convenience tilts in her favour. In the circumstances, she would suffer irreparable loss, if injunction, as prayed for, is not granted. Hence, point Nos.1 to 3 are answered in affirmative. Resultantly, following order is passed.

ORDER

1. Application is allowed.
2. Defendant Nos.1 to 12 are restrained temporarily till the disposal of the suit from creating third party interest in the suit lands.

Date : 03.05.2018.

(S.K. Khan)
Jt.Civil Judge J.D.,
Barshi.

CERTIFICATE

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

Name of Stenographer :
Court Name : S.K.Khan,
Jt.C.J.J.D.& J.M.F.C. Barshi.
Date : 03.05.2018
Judgment signed by the
presiding officer on : 03.05.2018
Judgment uploaded on : 03.05.2018