

MHST050003362021



IN THE COURT OF JT. CIVIL JUDGE, SENIOR DIVISION, KARAD

Special Civil Suit No. 174/2021

Mohan Samapt Ghadge(God)-1

Vs

Sampat Daji Ghadge (God)-4

ORDER BELOW APPLICATION AT EXH. 5

(Passed on this 24th day of June, 2022)

The plaintiff has filed the present application for temporary injunction by taking recourse to Order XXXIX Rule 1 of the Code of Civil Procedure 1908, for restraining defendant No. 1 from alienating the suit property or creating third party interest in it, till disposal of the suit.

2. Case of the plaintiff, in short is as under:-

Following agricultural lands mentioned in the para-1-A of the plaint situated at western Umbraj (Godwadi) Tal. Karad, Dist. Satara.

A]

Sr. No.	Gat No.	Area	Share
1.	30/9B	H-0.02-R	Entire
2.	67/2-C/3	H-0.38-R H-0.04-R pot Kharab	Entire
3.	67/4-A	H-0.20-R	Entire
4.	68/1	H-0.05-R	0.00.84
5.	68/4	H-0.33-R H-0.01-R Pot Kharab	0.16.50
6.	17/5	H-0.023-R	0.14.38
7.	20/1	H-0.80-R H-0.02-R Pot Kharab	1.40-R

Following agricultural lands mentioned in the para- 1-B of the plaint situated at western Umbraj (Godwadi) Tal. Karad, Dist. Satara, which stood on the name of defendant Nos. 3 and 4.

B]

Sr. No.	Gat No.	Area	Share
1.	16/5	H-0.85-R	0.42.50
2.	51/5-C/6	H-o.38-R	Entire

And house property mentioned in para-1-C situated at at western Umbraj (Godwadi) Tal. Karad, Dist. Satara, having Sr. No. 44 property No. 39 total ad-measuring 196 Sq. ft. described by following boundaries,

Towards East – Open plot of Subhash Waghu Ghadge,
Towards West – property of Pandurang Krishna Ghadge
Towards South - Road
Towards North - Shed of Bharat Ramchandra Ghadge.

Above properties are hereinafter referred to as 'suit properties' for the sake of brevity.

3. According to the plaintiff defendant No. 1 is their father and defendant No. 2 is their mother. Whereas defendant No. 3 is their sister. Marriage of defendant Nos. 1 and 2 is solemnized in the year 1965 and defendant No. 2 is legally wedded wife of defendant No. 1. Suit properties are ancestral properties of plaintiff and no partition at all has been took place between plaintiff and defendants. Due to dispute between defendant Nos. 1 and 2, Defendant No. 1 has droved defendant No. 2 from the matrimonial house in the year 1967, due to which she was constrained to reside at her parental house at Sangwad Tal. Patan and was doing labour work for her livelihood. During the period of 1970 defendant No. 1 has established illicit relation with one lady 'Subhadra' and when defendant No. 2 has visited the house of defendant No. , that time again defendant No. 1 not allowed her in the house. During that

period, the sister of defendant No. 1 tried to mediate between defendant Nos. 1 and 2, that time defendant No. 1 assured for giving good treatment to defendant No. 2 and so, in the year 1978 defendant No. 1 came to the house of defendant No. 1 for cohabitation, but thereafter also illicit relation of defendant No. 1 with 'Subhadra' has been continued out of which she has given birth to two sons Sambhaji and Sahaji. In the year 1979 defendant No. 1 has given birth to daughter (defendant No. 3). As defendant No. 1 failed to look after defendant No. 2 and plaintiffs and without any family necessity alienated some of the 'suit property' which is mentioned in para 1-B of the plaint, which is not binding upon rights of plaintiffs. Due to the said act of the defendant No. 1, plaintiffs have demanded the partition and their separate share to defendant No. 1 in November, 2020, to which defendant No. 1 has specifically denied even though plaintiffs are having 1/5th share in the suit property and so, plaintiffs have filed the present suit for partition and separate possession along with the present application for temporary injunction against defendant No. 1 only.

4. Defendant No. 1 has filed his say/written statement below

Exh. 29. According to the defendant No. 1, valuation of the suit property in the plaint is false and imaginary. As per defendant No. 1 suit properties were not his possession, but it was in the possession of the tenant since the year 1930, but thereafter, litigation arose in which he has got the above said properties as a owner thereof. According to the defendant No. 1, plaintiffs are his illegitimate children and 'Subhadra' is his first wife, out of which he has given birth to two sons Sambhaji and Shahaji. As per defendant No. 1, in the year 1978, 'Subhadra' was facing illness, that time defendant No. 2 came to his house and relations was established between them, out of which defendant No. 2 has given birth to plaintiffs and defendant No. 3. In short as per defendant No. 1, one Subhadra was his first wife and as plaintiffs are illegitimate sons so, not entitled to demand the partition and so, he requested to rejection of application with costs.

5. From the rival pleadings of parties following points arise for my determination, on which I have recorded my findings thereon with reasons to follow.

Sr.No	Points	Findings
1]	Whether plaintiffs prove prima-facie case in his favour?	Yes
2]	Whether plaintiffs prove that balance of convenience lies in their favour?	Yes
3]	Whether plaintiffs prove that they will suffer irreparable loss if temporary injunction as sought is not granted ?	Yes
4]	What order ?	As per final order.

R E A S O N S

6. In support of their contention, plaintiffs have filed on record vide list Exh. 3 7x12 extract of the suit properties, copy of sale deeds etc. Heard the learned counsel for plaintiffs Shri. A. R. Dange and the learned counsel for the defendant No. 1 Shri. A. P. Kanse.

AS TO POINT NO. 1:-

7. The case of the plaintiff is to the effect that 'suit properties' are ancestral properties of plaintiff and defendant No. 1. The marriage of defendant No. 2 with defendant No. 1 is solemnized in the year 1965, out which plaintiffs and defendant No. 3 are born. As defendant No. 1 has established illicit relation with one lady

'Subhadra' and out of which two children are born. As plaintiffs have demanded the partition because defendant no. 1 has without any family necessity alienating the suit property, but defendant No. 1 has denied to effect the partition and so, cause of action arose to file the present suit.

8. As per defendant No. 1, 'suit properties' are not ancestral properties, but some of the 'suit properties' was in the possession of tenant since 1930, but thereafter dispute arose in between the original owner (defendant No. 1) and tenant and thereafter as a result of litigation suit properties came in his possession. Here, even though defendant No. 1 has denied the nature of the suit properties being ancestral, but it appears from his pleading itself that he was owner and it was in the possession of tenants since the year 1930 which was returned to him. So, only because suit properties was in the possession of tenant, that itself cannot change the nature of the suit properties being ancestral. So, prima-facie it appears that suit properties are ancestral properties of defendant No. 1.

The second contention to put forth by the defendant No. 1 is that

mother of plaintiff Indubai (defendant No. 2) is not his first wife, but one Subhadra is his first wife. As Subhadra was facing illness in the year 1978, that time defendant No. 2 visited his house and illicit relation were established between them, out of which plaintiffs and defendant No. 3 have been born. In short, as per defendant No. 1, as plaintiffs are illegitimate sons and so, not entitled to demand partition.

9. As discussed above here prima-facie it appears that suit properties are ancestral one, but defendant No. 1 contends that plaintiffs are his illegitimate sons whereas contention of the plaintiff is to the effect that their mother defendant No. 2 is his first wife. Here, whether defendant No. 2 or 'Subhadra' is the first wife of defendant No. 1 has to be decided in due course of proceeding. Admittedly plaintiffs are sons of defendant No. 1 and suit properties are ancestral one. In this scenario when plaintiffs are claiming temporary injunction to the extent of alienation, in my opinion, they have successfully established prima-facie case in their favour.

AS TO POINT NOS. 2 TO 4:-

10. When plaintiffs have established prima-facie case in their favour then balance of convenience also lies in favour of plaintiffs because their relationship is not denied and who is the first wife has only to be decided at the time of trial. As far as, causing irreparable loss is concerned, in the event, suit properties are alienated then being a sons, it will cause irreparable loss to the right of plaintiffs. consequently, I answer point Nos. 2 and 3 in the affirmative and in response to point No. 4 pass the following order.

O R D E R

1. Application is allowed.
2. Defendant No. 1 is hereby restrained from alienating the suit properties or creating third party interest in it, till the disposal of the suit.
3. Costs in cause.

Place : Karad

Date : 24.06.2022

(Y. H. S. Deshmukh)
Jt. Civil Judge, Senior Division,
Karad

(S. M. Bondarde), Stenographer