

REGULAR CIVIL SUIT NO. 119/2024
ORDER BELOW EXH. 05.

The present application is filed by the plaintiff for temporary injunction under Order XXXIX, Rule 1 of the Code of Civil Procedure against defendants for restraining them from, making construction in or, alienating or creating charge on the suit properties.

The brief facts of the plaintiff's case are as under-

2. House and landed properties situated at village Katewadi, Tarale, Velkhandwadi and Awarde, Tal. Patan, (more particularly described in para 1 of the application hereinafter referred to as suit properties for the sake of brevity) are ancestral property properties of the plaintiff and the defendants. It appears from record that suit properties serial no.9 to 24 of clause 1A of the application were partitioned by registered partition deed dated 28.12.1956 in between father of plaintiff Shankaraji, father of defendants Malharrao, defendants no. 1, 2, 5, 6 and deceased Laxmibai. In fact, defendants no. 1 to 6 and their predecessor have no right to execute the partition deed, because the suit properties are Watan Properties. Therefore, the alleged partition deed is illegal, null, void and not binding on the share of the plaintiff. The plaintiff born on 16.02.1961. Further, defendants no. 1, 2, 5 and 6 were minor at the time of alleged deed. After alleged partition father of plaintiff Shankaraji and father of defendants Malharrao were residing jointly and also possessing joint family properties jointly. Further, Malharrao and Shankaraji also had joint account in the bank. They also jointly gave notices to the tenants and conducted tenancy cases jointly. Further, plaintiff, defendants and

their predecessor have jointly sold some ancestral properties. Considering all these facts it clears that in spite of alleged registered partition deed the family of plaintiff and defendants remained undivided. Moreover, suit properties serial no. 1 to 8 of 1A, 1 to 4 of 1B, 1 and 2 of 1C and 1 to 7 of 1D are not included in the alleged deed. Therefore, these properties also not partitioned by metes and bounds till today. Under such circumstances the plaintiff demanded partition, but defendants gave evasive answers. Defendants no. 1 to 4 intending to make construction in the suit property serial no. 8 of 1A and serial no. 2 of 1B started to clean the same. The plaintiff asked about the same to defendant no. 2, but he used rude language. As the suit properties are ancestral joint family properties of the plaintiff and defendants and the plaintiff has share therein. If the defendants made construction in the suit property or alienated the same it will cause complication and multiplicity of proceedings. The plaintiff has prima facie case. Further, balance of convenience also tilts in his favour and if the application is not allowed it will cause irreparable loss to him. Hence, he prayed to allow the application.

3. Defendants no. 1 to 4 filed their say at Exh. 69 and strongly objected the application of the plaintiff. According to the defendants, only suit properties survey no. 2/11, 288/1 and 438/6 are the Watan Properties, so it is not necessary to get permission of the Collector. The plaintiff has admitted the registered partition deed dated 28.12.1956. Plaintiff and defendants have not challenged the deed after attaining majority. They all are possessing the property as per partition deed. Suit property survey no. 288/1 is allotted to the share of Malharrao. However, due to hand writing

mistake the survey number is wrongly mentioned as 228/1. However, the same was corrected by mutation entry no. 4635. In spite of registered partition deed Shankaraji sent a notice dated 06.05.1995 and demanded partition. However, Malharrao gave answer through advocate and denied the partition as properties were already partitioned. Therefore, the suit is not within limitation. Properties which are not mentioned in the deed were already partitioned between the parties and it is mentioned in the deed. As per partition defendants got survey no. 2/11. Predecessor of defendants instituted suit for removal of encroachment and the appeal is pending in the district Court. As the plaintiff is not concern to that property he was not party to the proceeding. Further, Dadaso Rajemahadik instituted suit for injunction. However, predecessor of plaintiff was not made party in the suit. Properties situated at Sawarghar and Nivade were given to the Wind Mill and compensation was received by Malharrao and Shankaraji. Survey no. 288/1 and suit property 1B serial no. 2 were allotted to the share of defendants and they intended to make construction therein. As the suit properties are already partitioned the plaintiff has no right to demand partition again. Therefore, plaintiff failed to established prima facie case. Further, balance of convenience also tilts in favour of the defendants. So, it is prayed to reject the application.

4. Defendants no. 5 and 6 filed their say cum written statement at Exh. 82 and denied the allegations against them. According to them at the time of alleged partition deed they were minor. They admitted that suit properties are never partitioned by

metes and bounds. They further stated that they never avoided the partition of the suit properties. Lastly, they submitted that they are not intent to alienate the suit property. Hence, the application be rejected.

5. The following points arise for my determination, on which I have recorded my findings, with reasons, therefor -

POINTS	FINDINGS
1 Does the plaintiff make out that he has prima-facie case ?	No.
2 Does the plaintiff make out that, he will suffer irreparable loss, if the injunction is not granted ?	No.
3 Does the plaintiff further make out that, balance of convenience lies in his favour ?	No.
4 What order ?	Application is rejected.

REASONS

6. Heard both sides. Perused record and proceedings. Learned advocate Shri A A Shaikh for the plaintiff submitted that the alleged partition deed is of the year 1956 and the plaintiff was born on 16.02.1961. Therefore, whatever the deed is not binding on the plaintiff. Perusal of mutation entry no. 4635 it is clear that specific remark in respect of survey no. 288/1, 191/12, 262 etc.. As per the defendants survey no. 288/1 was wrongly mentioned in the partition deed and the same was rectified. However, no rectification deed is produced on record. Property at serial no. 1 to 8 are not

included in the alleged partition deed. Perusal of mutation entry no. 5564 it is clear that survey no. 288/1 to 8 is Watan Land. Therefore, the land was not entitled for partition. The defendants have not produced any material to show that the partition was effected after obtaining requisite permission. Considering all these aspects he prayed to allow the application.

7. On the other hand learned advocate Shri Y S Pendharkar for defendants no. 1 to 4 argued that the partition deed is registered document and it was executed between father of plaintiff, father of defendants and others. As the partition deed was acted upon, the plaintiff has no right to demand partition again. Perusal of mutation entry no. 6483 it is clear that survey no. 228 was wrongly mentioned in the deed and the same was corrected. As per partition deed names of the parties were recorded to their respective shares. Till today nobody has challenged the mutation entries. Father of plaintiff sent notice to the father of defendants in the year 1995. To which reply notice was sent and refused to the partition. Because the joint family properties were already partitioned by registered partition deed. It is true that plaintiff was not born on the date of partition deed. However, on that ground he has no right to challenge the partition deed. He has only right to get share in his father's property. Therefore, he prayed to reject the application.

As to points No.1 to 3 :-

8. Before going to the merits of application at the outset it is necessary to mention facts not in dispute. The suit properties were joint family properties of the plaintiff and defendants is not in

dispute. Further, the genealogy mentioned in the plaint is also not in dispute.

9. Considering the above undisputed facts it is contention of the plaintiff that the alleged partition deed is null and void and not binding on the share of the plaintiff. Because some suit properties are Watan properties and requisite permission was not taken. Further, the plaintiff was not born and defendants were minor at the time of partition deed. So, the suit properties are joint family properties of the plaintiff and the defendants and they are yet to be partitioned between the parties by metes and bounds.

10. On the other hand it is defence of the defendants that the partition deed is registered document and it was executed in the year 1956. Till today nobody has challenged the registered partition deed. As per the partition deed names of the parties were recorded to the revenue record of the properties. So, the plaintiff cannot again seek partition of the properties. Considering the rival contention of the parties it clears that the only bone of contention between the parties is that as per plaintiff suit properties are till joint family properties and as per defendants the suit properties were already partitioned between the parties by metes and bounds.

11. At the outset it is necessary to go through the partition deed on record. Perusal of registered partition deed dated 28.12.1956 it appears that father of defendant no. 1 and 2 namely Malharrao for himself and for minor defendants no. 1 and 2 and father of plaintiff namely Ramrao for himself and for minor

defendants no. 5 and 6, Laxmibai, Anandibai (mother of Malharrao and Ramrao) were effected the partition deed. Partition deed is registered document. In the partition deed properties with survey numbers are mentioned under the name of respective parties, which were allotted to them. Further, in the partition deed it is also mentioned that house properties and Gavthan properties of joint family properties were already partitioned. Perusal of mutation entry no. 4635 it clears that the effect of partition deed was given to the revenue records on 23.01.1957. Accordingly, names of the parties were recorded to the 7/12 extracts of the suit properties.

12. As per the plaintiff suit properties Sr. no. 8 of 1A (Gat no.288) and 1B were not included in the partition deed. As per the defendants Gat no.288 was wrongly mentioned as 228 and it was corrected in the mutation entry no. 4635. Perusal of mutation entry no. 4635 it is clear that the survey no. 288/1 was recorded in the name of Malharrao as per partition deed. There is nothing on record to show that the said entry was challenged by plaintiff or any other person.

13. As mentioned above the properties are recorded in the names of respective parties as per partition deed. Further, father of plaintiff has not challenged the partition deed during his life time. Perusal of notice (Exh. 73/8) dated 06.02.1995 it appears that father of plaintiff sent notice to the father of defendants and asked for partition of the suit properties. Father of defendants sent reply dated 17.02.1995. Thereafter, also father of plaintiff has not taken any steps. Perusal of notice dated 06.02.1995 it is mentioned

therein that Malharrao and Shankaraji had sister namely Prabhavati Anandrao Khanvilkar. However, in the present suit the plaintiff has not made her or her heirs, as the case may be, as party to the suit. Therefore, it is clear that the plaintiff is not come with clean hands before the Court.

14. By this application plaintiff has sought two prayers. First is to restrain defendants from alienating suit properties and second is to restrain them from making construction on the suit properties at Sr. no. 8 of 1A and 1B. It is worthwhile to note that, the defendants will make construction on their own risk. Further, if the plaintiff will succeed to get relief claimed then definitely he will get share in the suit properties. Because, the total area of Gat no.288 (new Gat no.114/1) is 0.22 R and it is not contention of the plaintiff that the defendants are making construction on the entire property. In respect of alienation of the properties, as per defendants they are not going to alienate the suit properties. The plaintiff has not mentioned in his application how and in what manner the defendants are going to alienate the suit properties. Further, plaintiff has not produced any material to support his contention. Moreover, as per the partition deed the names of the parties are recorded to the suit properties respectively. Therefore, at this stage there is no reason to disbelieve the partition deed, so defendants cannot be restrained. Moreover, Section 52 of the Transfer of Property Act will take care of any transaction in respect of suit properties during pending the suit.

15. It is not contention of the plaintiff that the alleged

partition deed was executed by playing fraud. Further, there is nothing on record to disbelieve or create doubt regarding the registered partition deed. As per the plaintiff even if the partition deed was executed the properties of the family are jointly possessed and bank account of Malharrao and Shankaraji was also jointly maintained. However, in support of this contention, the plaintiff has not filed any material on record. Only plaintiff was not born or defendants were minor at the time of the partition deed this fact does not itself invalidate the registered partition deed. Whether partition deed is valid or not ? Whether suit properties are partitioned by metes and bound or not ? Whether plaintiff has right to seek partition or not ? All these questions shall be answered on merits of the suit. However, at this stage as per partition deed dated 28.12.1956 prima-facie it appears that the suit properties were already partitioned.

16. Considering material on record the plaintiff failed to prove prima facie case in his favour. Further, in respect of irreparable loss if defendants are restrained from making construction then definitely it will cause them irreparable loss. On the other hand if the application is rejected there will be no loss to the plaintiff. Because, the defendants will make construction on their own risk. Further, balance of convenience also tilts in favour of the defendants. Considering over all discussion I answer points no. 1 to 3 in the negative.

As to point No.4 -

17. On the basis of findings recorded to points no. 1 to 3 the

plaintiff is not entitled for the relief of temporary injunction and accordingly application liable to be rejected. In result, I pass following order.

ORDER

Application (Exh-5) is rejected with costs.

Place :- Patan.

(P. D. Bhirde)

Date:- 18.10.2024.

2nd Jt. Civil Judge, J. D. Patan.

Certificate

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

Name of Court	2 nd Jt.C.J.J.D & J.M.F.C, Patan
Name of Steno	A. R. Pawar
Date of Judgment/Order	18-10-2024
Judgment/Order signed by the P. O	18-10-2024
on	
Judgment/Order uploaded on	19-10-2024