

MHST160004632024

**Order Below Exh. 5 in R.C.S. No.
86/2024.****(Shri. Chandrakant Jedhe V/s Sharda
Mahadev Jedhe & Ors)**

This is an application filed by plaintiff under Order 39 Rule 1 (c) of the Code of Civil Procedure 1908. Through this application plaintiff seeking temporary injunction against defendant nos.18 to 22 and persons on their behalf that not to construct over the suit property.

Admitted Facts:

2. Sole ancestor was Raghu Rama Jedhe. He had two sons namely Vyankat and Raghunath.

Case of plaintiff in short is as under:

3. Plaintiff submitted that, properties described in para 1A of plaint are ancestral properties of him and defendant nos.1 to 16. After death of Rama, on 21.07.1951, names of his sons were added for ½ share. Said mutation entry having nos. 953 and 1214. Plaintiff and defendant no.16 are heirs of Vyankat. Defendant nos. 1 to 15 are heirs of Raghunath. The names of plaintiff and defendant nos. 1 to 16 are entered in revenue record according to aanewari. Rama Jedhe had three daughters namely Shantabai, Sushila and Malan. These daughters relinquished their shares in the names of plaintiff and defendant no. 16.

4. On 24.05.2002, defendant nos. 3, 4, predecessor of defendant nos. 1 and 2 namely Mahadev, mother of defendant nos. 8 and 9 namely Shakuntala, mother of defendant nos. 10 to 15 namely Subhadra without consent of plaintiff, sold 0.43 R area out of block no. 110 to defendant no.25.

5. According to plaintiff, he sold 14.50 R area out of block no.109/3 to defendant nos. 26 and 27 for his economic necessity. Defendant no. 3 sold 0.40 R area on 23.05.2008, without consent of plaintiff to defendant no.30. Defendant no.3 transferred the suit property to defendant no. 28, village panchayat and defendant no. 29 Commissionerate of Animal husbandry vide registered Gift-deed. Defendant no.3 sold 20R area out of block no.110, to defendant no.17 in the year 2015 without consent of plaintiff. Defendant no.23 is purchaser of 0.40 R of area out of block no.110. Said sale-deed is executed in 2009, without consent of plaintiff.

6. Plaintiff further submitted that predecessor of defendant nos. 1 and 2 sold 8 R area out of block no.110 to defendant nos. 18 to 22. Said transfer is dated 09.02.2012. Defendant nos. 1 and 2 sold 68.83 R out of block no.110 to defendant no.24 without consent of plaintiff. The partition of suit properties yet not done by metes and bounds between plaintiffs and defendant nos. 1 to 16. Defendant nos. 17 to 30 are third party purchasers. They are trying to alienate suit property to other. Hence, there is difficulty in partition. Plaintiff requested to defendant nos. 1 to 16 about partition. But they are not ready for it.

7. According to plaintiff, defendant nos. 18 to 22 illegally entered in block no.110 and try to possess the suit property. They start to dig the pits in the suit property. Defendant nos. 18 to 22 are third party purchasers. Without partition of suit property between plaintiff and defendant nos. 1 to 16, they cannot construct over the suit property. If defendant nos. 18 to 22 construct over suit property, then irreparable loss caused to plaintiff. There is change in suit property. Hence, plaintiff prayed for temporary injunction to restrain defendant nos. 18 to 22 from construction.

Case of defendant nos. 18 to 22:

8. According to defendant nos.18 to 22, there was partition took place between Vyankat and Raghunath in their lifetime. They were resided separately. They possess suit properties separately. In this situation, suit properties are not joint properties of plaintiff and defendant nos. 1 to 16. It is shown by 7/12 extract of suit properties. Aanewari is mentioned upon 7/12 extract. Plaintiff did not take objection regarding sale-deed of defendant nos. 18 to 22 since 2012 to 2024. Defendant did not make complaint regarding entries of defendant nos. 18 to 22 to record of suit property.

9. Defendant nos. 18 to 22 submitted that there are various constructions made by various persons in block no.110. There is resort of one namely Ravindra Bhilare. Plaintiff did not take objection for construction of that resort. There is one house of a person namely Ajinkya Jadhav. The entry of house of Ajinkya Jadhav is recorded in revenue record of suit property. There is house of defendant no.3 in block no.110. Plaintiff possesses the suit property having block

no.110. His house in block no.109. Therefore, there is partition between plaintiff and defendant nos. 1 to 16.

10. Defendant nos. 18 to 22 further submitted that, plaintiff and defendants gave some portion of suit property having block no. 110 to village panchayat and Commissionerate of Animal husbandry. There is construction of them over suit property. Names of defendant nos. 28 and 29 are recorded in revenue record of suit property. There was no joint family between plaintiff and defendant nos. 1 to 16. Plaintiff also did not take consent of any person for transfer of suit property. Hence, there is partition between plaintiff and defendant nos. 1 to 16. The relief claimed by plaintiff regarding gift-deed and sale-deed is out of limitation.

11. According to defendant nos. 18 to 22, plaintiff and defendant nos. 1 to 16 took various loans from various institutions. For these loans, suit properties are mortgaged. Therefore, partition of suit properties took place. Defendant nos. 18 to 22 have purchased area in suit property with description. Defendants not construct over suit property, but defendant nos. 1 and 2 constructed retaining wall over the same. In block nos. 109 and 110, there are 15 properties and said properties having village panchayat numbers. Plaintiff did not include those properties. Hence, application deserves to be rejected.

12. Following points arise for my determination and my findings on each of them with reasons are as under:

<u>Sr. No.</u>	<u>Points of Determination</u>	<u>Findings</u>
1.	Whether plaintiff has prima facie case in his favour?	- No.
2.	Whether balance of convenience lies in favour of plaintiff?	- No.
3.	Whether plaintiff will suffer irreparable loss, if injunction is refused?	- No.
4.	What Order?	- Application is rejected.

REASONS

Point Nos.1 to 3 :

13. Point nos. 1 to 3 are interlinked with each other, hence they are discussed together.

14. Ld. Advocate of plaintiff argued that, till today there is no partition of suit properties between plaintiffs and defendant nos.1 to 16. Defendant nos. 3, 4, predecessor of defendant nos. 1 and 2 namely Mahadev, mother of defendant nos. 8 and 9 namely Shakuntala, mother of defendant nos. 10 to 15 namely Subhadra without consent of plaintiff. Defendant no. 3 sold 0.40 R area on 23.05.2008, without consent of plaintiff to defendant no.30.

15. Ld. advocate of plaintiff further argued that predecessor of defendant nos. 1 and 2 sold 8 R area out of block no.110 to defendant nos. 18 to 22. Said transfer is dated 09.02.2012. Defendant nos. 1 and 2 sold 68.83 R out of block no.110 to defendant no.24 without consent of plaintiff. The partition of suit properties yet not done by metes and bounds between plaintiffs and defendant nos. 1 to 16.

16. It is argued by Ld. advocate of plaintiff that defendant nos. 18 to 22 illegally entered in block no.110 and try to possess the suit property. They start to dig the pits in the suit property. Defendant nos. 18 to 22 are third party purchaser. Without partition of suit property between plaintiff and defendant nos. 1 to 16, they cannot construct over the suit property. If defendant nos. 18 to 22 construct over suit property, then irreparable loss caused to plaintiff. There is change in suit property. Hence, plaintiff prayed for temporary injunction to restrain defendant nos. 18 to 22 from construction.

17. Per contra Ld. Advocate of defendant nos. 18 to 22 argued that there is separate shares of plaintiff and defendants. On perusal of 7/12 extract of block no.110, there are separate shares of plaintiff and defendants. Plaintiff claims relief after 12 years. Period of limitation for claiming relief is over. Hence, plaintiff cannot get main relief. As main relief is not granted, interim relief cannot be granted to plaintiff. Similarly, defendant no. 3 transferred suit property to Shekhar Gaikwad, defendant no. 17. Ravindra Bhilare

defendant no. 30, sold suit property to Ravikant Kambale, defendant no. 23. Plaintiff did not take any objection about mortgage, loan.

18. Ld. Advocate of defendant argued that, jointness of joint family must be shown. Defendant nos. 18 to 22 have filed documents at Exh.44. Ld. advocate of defendant has argued that plaintiff gave an application to Tahsildar Wai which is at Exh.44/2. Said application is for converting new condition to old. Plaintiff submitted before Tahasildar that conversion of new condition into new for share. Said share is of area 12R. Accordingly Tahasildar Wai passed order and convert new condition into old. Hence, it reveals that there is partition of suit property. Therefore, plaintiff has no locus standi to file this suit. Plaintiff is estopped under section 115 of Indian Evidence Act 1872.

19. Ld. advocate of defendant further argued that there are houses, resorts in block no.110. Plaintiff did not include those properties in the suit. Similarly, plaintiff did not give proper stamp fee. If injunction is granted then irreparable loss caused to defendant nos. 18 to 22. Plaintiff does not come to the Court with clean hands. He suppressed material facts. Hence application deserves to be rejected.

20. I perused record of the case. On perusal of Exh.3/1, 3/2, 3/3, 3/4, 3/5, 3/6, there are 7/12 extracts of block nos.110, 84/1A/1, 109/17, 85/7B, 109/3, 109/9 respectively. Prima-facie it seems that there are names of plaintiff and defendants. Mutation entry no. 1213 is at Exh.3/7. Prima-facie it seems that defendant no.3 transferred suit property to defendant no.30. Index II is at

Exh.3/9. Prima-facie it seems that Mahadev and defendant no.3 transferred suit property to defendant no.24. Index II is at Exh.3/10. Prima-facie it seems that defendant no.30 transferred suit property to defendant no.24. Index II is at Exh.3/11. Prima-facie it seems that defendant no.3 transferred suit property to defendant no.17. Index II is at Exh.3/12. Prima-facie it seems that predecessor of defendant nos.1 and 2 Mahadev transferred suit property to defendant nos.18 to 22. Index II is at Exh.3/13. Prima-facie it seems that predecessor of defendant nos. 5 to 7 Vatsala transferred suit property to defendant no.25. Index II is at Exh.3/14. Plaintiff has filed 8A extracts of village panchayat properties nos. 377 and 135, which are at Exh.13/1 and 13/2 respectively. Village panchayat gave letter to plaintiff which is at Exh.13/5. Prima-facie it is seen that, said letter is about permission of construction not given to defendant nos. 18 to 22.

21. On perusal of record of the case, it is seen that at Exh.42/1, 8A extract of village panchayat property no.132/133 situated in block no.110. At Exh.42/2, 8A extract of village panchayat property no.134 situated in block no.110. At Exh.42/3, 8A extract of village panchayat property no.135. At Exh.42/4, 8A extract of village panchayat property no.365 situated in block no.110. At Exh.42/5, 8A extract of village panchayat property no.145. At Exh.42/6, 8A extract of village panchayat property no.146. At Exh.42/7, 8A extract of village panchayat property no.324/1. At Exh.42/8, 8A extract of village panchayat property no.324 situated in block no.110. At Exh.42/9, 8A extract of village panchayat property no.101 situated in block no.109/9.

22. On perusal of record of the case, defendant has filed documents at Exh.44. It is seen that at Exh. 44/2, application filed by plaintiff for converting new condition into old, and order passed by Tahasildar Wai on same. At Exh.44/1, there is mutation entry in this regard. Plaintiff has filed sale-deed between Mahadev Jedhe and defendant nos. 18 to 22 at Exh.3/8.

23. Defendant nos. 18 to 22 have filed on record documents at Exh.53. These includes Judgment of Regular Civil Suit no. 131/1987 and abstract of same. This suit was instituted for partition of properties, which are suit properties in present suit. On perusal of documents at Exh.53/1, it is seen that plaintiff was party to that suit. He was power of attorney of defendant no.1 that is Vyankat Jedhe. Therefore plaintiff has knowledge of previously instituted suit. Prima-facie it is seen that the partition took place between plaintiff and defendants in respect of suit properties.

24. It is taking into consideration that defendant no.3 sold 20 R area out of block no.110 to defendant no.17. Said transaction is in the year 2015. Plaintiff did not take any objection regarding this at that time. Similarly pre-decessor of defendant nos.1 and 2 sold 8 R. Area out of block no. 110 to defendant nos. 18 to 22 in the year 2012. Plaintiff did not take any objection at that time also. Defendant no.23 is purchaser of 0.40 R of area out of block no.110. Said sale-deed is executed in 2009, without consent of plaintiff. At that time plaintiff did not take objection. Plaintiff has filed an application for converting new condition into old. Considering the above discussion

and perusal record of case, prima facie it shows that there is partition between plaintiff and defendants.

25. Plaintiff did not come to the Court with clean hands. He suppressed the material facts. Similarly, it is settled law that injunction cannot be granted against co-sharers or co-owners.

26. According to Order XXXIX Rule 1 of Code of Civil Procedure 1908, temporary injunction may be granted, that any property in dispute in a suit is in danger of being alienated, or cause injury to the plaintiff in relation to any property in dispute in the suit, by any party to the suit then court may by order grant temporary injunction to restrain such act or preventing the alienation until disposal of the suit or until further orders.

27. Considering above discussion, if injunction is granted then irreparable loss caused to defendants. Hence, I answer point nos. 1, 2 and 3 are in negative. In answer to point no. 4, I pass following order:

ORDER

1. The application is rejected.
2. Cost in cause.

Date : 05.06.2024

(S. S. Kulkarni)

Place : Wai.

4th Jt. C. J. J. D, Jr. Dn. Wai.