

MHST160015422022



Regular Civil Suit No.202/2022
Sangita Vs. Mahadeo & ors.

Order Below Exh.05
(Passed on 31st March, 2023)

This is an application filed by the plaintiff for grant of temporary injunction under Order XXXIX, Rule 1 and 2 of the Civil Procedure Code.

The case of plaintiff, in brief is as under -

2. The original ancestor deceased Jagannath was having ancestral property bearing Gat No.10/3/1, ad-measuring area 0.39.47 R out of total area 77.60 R, at Mouje Siddhanathwadi, Taluka Wai, District Satara. It is hereinafter referred as “the suit property”. Its four boundaries are as under -

Towards East	-	The property of Mr. Bagade,
Towards West	-	Internal Road,
Towards South	-	The property of Mr. Ashok Kharat,
Towards North	-	House property of Mr. Ambrale, Hemakant Pawar and Shankar Suryawanshi.

3. Deceased Jamuna was wife of deceased Jagannath. They were having four sons namely Mahadeo (defendant No.1), Uttam (deceased), Balu (defendant No.2) and Ravindra (defendant No.3)

alongwith two daughters namely deceased Bharati and plaintiff Sangita. Defendant No.4 Sunita was wife of deceased Uttam. Though Jamuna and Sunita are dead, their names are still appearing in the 7/12 extract of the suit property. Defendant No.5 to 9 are the legal representatives of deceased Bharati.

4. As the suit property is ancestral, the plaintiff is having undivided share in it. Already, 1.00 R portion out of the suit property has been sold out to defendant No.10 by consent of all the concerned. Therefore, she has no grievance against him and he has been arrayed as a party to the suit so as to avoid technical irregularity. The suit property is not yet partitioned. When the plaintiff asked for her share, defendant No.1 to 3 and 4A & 4B denied it. Defendant No.4A and 4B sold out some portion out of the suit property to Shri Ambrale and defendant No.10, illegally. They started construction on it. Now, the plaintiff has got credible information that the defendants are intending to alienate the suit property. They are in its possession. If they get success in their attempts, it will cause irreparable loss to the plaintiff. She has good prima facie case and balance of convenience lies in her favour. Therefore, she prayed to restrain defendant No. 1 to 3 and 4A & 4B from alienating the suit property and from creating third party interest in it till decision of the suit. She also prayed for restraining the concerned defendants from carrying out any further construction in the suit property till final decision of this suit by way of temporary injunction.

Defence put forth by defendant No.1 to 4A & 4B -

5. The concerned defendants have filed their reply at Exh.23. They denied the contents of application. They submitted that the suit is

bad for non joinder of necessary parties, as the plaintiff has not arrayed all the co-sharers and purchasers as party to the suit. The genealogy and four boundaries of the suit property are wrongly mentioned. The suit property was originally owned by Nanu Suryawanshi. He was having two sons namely Jagannath and Shankar. There was partition in between them and their legal heirs are in possession of their respective shares. In January 1990, deceased Jagannath partitioned the suit property in his share amongst the plaintiff and defendants. Accordingly, 1.00 R portion was sold out and its sale proceed was given to deceased Bharati (mother of defendant No.6 to 9). Similarly, 1.00 R portion was given to the plaintiff and she sold it out to her matrimonial relative namely Hemakant Govindkumar Pawar. During that partition, the plaintiff relinquished her entire share in favour of defendant No.1 to 4. Therefore, the remaining portion out of the suit property belongs to defendant No.1 to 4 exclusively and they are in its possession.

6. The defendants further submitted that the purchasers of land sold out by the plaintiff and defendant No.5 to 9 have constructed their houses over there. The plaintiff has not objected for it, till date. Thereafter, defendant No.4A & 4B constructed cattle shade and tin shade. In the year 2019-2020, they constructed permanent RCC construction in their share. Now, they are residing in it. This fact is very well known to the plaintiff. Still, she has filed the present suit with malafide intention to tease them. The plaintiff has already sold out her share and therefore, she is not concerned with the suit property. She has not raised any grievance since the oral partition in the year 1990 and even after the death of her father. The plaintiff has not come with clean hands before the Court. She has no prima facie case. If the present application is allowed, it will cause irreparable loss to the defendants,

balance of convenience lies in their favour. Ultimately, they prayed to reject the application.

7. Defendant No.5 to 9 appeared in the matter and they admitted the suit claim vide their written statement (Exh.34).

8. Considering the rival submissions of both the sides, following points arise for my determination, to which I record my findings with the reasons given as under -

<u>Sr. No.</u>	<u>Points for determination</u>	<u>Findings</u>
1.	Whether the plaintiff has prima facie case ?	Yes.
2.	Whether the balance of convenience lies in her favour ?	Yes.
3.	Whether the plaintiff would suffer irreparable loss, if the injunction as sought by her is not granted ?	Yes.
4.	What order ?	The application is allowed.

REASONS

9. I have heard Learned Advocate Ms. N.M. Mokashi for the plaintiff. She argued that the suit property is an ancestral property, which is not yet partitioned. The defendants No. 1 to 4A & 4B are carrying out construction in the suit property. Though they filed pursis (Exh.31) that the construction is complete, but they may restart it. They are about to alienate the suit property, which will cause irreparable loss to the plaintiff. There is nothing on record to show that there was oral

partition in the year 1990. The plaintiff has never relinquished her right in the suit property. Therefore, she prayed to allow the application.

10. On the other hand, Learned Advocate Mr. S.R. Gadhave argued that the four boundaries of suit property are not properly described. The house construction is already completed. The plaintiff has specifically admitted in paragraph No.7 of the application that she has orally relinquished her right in the ancestral house property in favour of the defendants. It shows that there was oral partition in between them. Defendant No.5 to 9 have already disposed of their share in favour of Shri Amrale. Therefore, they are not concerned with the suit property. Moreover, Shri Amrale has not been made party to the suit. Defendant No.1 to 4A & 4B have incurred huge money for the development of suit property. Hence, he prayed to reject the application.

11. Learned Advocate Mr. S.S. More for defendant No.5 to 9 argued that the suit property is ancestral and therefore, they have also share in it. The suit property is not yet partitioned. The defendant No.1 to 4A & 4B are carrying out construction in the suit property, which will change its nature. If they keep this construction going on and alienate the suit property, it will cause irreparable loss and more hardship to the plaintiff and defendants No. 5 to 9. Therefore, he prayed to allow the application.

As to point No.1 to 3 -

12. All these points are inter connected with each other. Hence, they are taken for simultaneous discussion so as to avoid repetition. The plaintiff has come with a specific case that the suit property is ancestral

and it is not yet partitioned. In support of this, she has relied upon 7/12 extract of the suit property. It prima facie shows that 0.3947 R portion of the suit property is in common possession of the plaintiff and defendants and it is not yet partitioned. The defendant No.1 to 4A & 4B have come with specific defence that the suit property was orally partitioned in the year 1990 and the plaintiff as well as mother of defendant No.6 to 9 relinquished their right in the suit property.

13. Learned Advocate Mr. Gadhave drew my attention towards contents in paragraph No.7 of the present application, wherein the plaintiff has submitted that she orally relinquished her right in the ancestral house property. However, this submission is not sufficient to infer that the plaintiff also relinquished her right in the suit field property. Moreover, there is no registered deed to that effect.

14. Further, the plaintiff relied upon mutation entries of the suit property. Which show that the names of plaintiff and defendants have been mutated in the revenue record of the suit property, after the death of deceased Jagannath on 13.09.2002. Furthermore, the mutation entry No. 5706 shows that after the death of deceased Bharati Ramesh Sapkal on 16.05.2016, the names of her legal representatives (defendant No.5 to 9) have been mutated in the suit property.

15. Thus, the aforementioned documents go to show that the plaintiff has good prima facie case, which needs proper adjudication during trial. It is well settled that mere existence of the prima facie case is not sufficient to grant temporary injunction. At the same time, the plaintiff has to fulfill the criteria of another two conditions precedent i.e. balance of convenience and irreparable loss. Now, it is to be seen

that whether the plaintiff has balance of convenience in his favour and whether she would suffer irreparable loss, if the injunction as sought by her is not granted.

16. It is the contention of plaintiff that defendant No.1 to 4A & 4B are carrying out construction over the suit property, which would change the nature of suit and create further complications. In support of this, she has filed on record certain photographs & bill alongwith list (Exh.16). It appears that those were snapped on 31.10.2022. They prima facie show that the construction is almost upto slab level. Thereafter, the defendant No.1 to 4A & 4B also filed one photograph on record alongwith list (Exh.30), which prima facie shows that the alleged construction is almost completed.

17. Thus, the material available on record shows that the alleged construction is almost completed. Defendant No.1 to 4A & 4B also filed pursis (Exh.31) and submitted that the house construction is completed and they are residing therein. However, as per the submission of plaintiff, the defendants may carry out further construction thereupon. I find substance in this submission. The concerned defendants are in actual possession of the suit property. Therefore, they may carry out further construction in the suit property, which may change the nature of suit property and create further complications. It appears that the suit property is not partitioned by mets and bounds. The theory of oral partition has to be proved by the reliable and cogent evidence.

18. In view of the above discussion, the plaintiff has good prima facie case. If the defendants carry out further construction in the

suit property and alienate it, it may affect the rights of the plaintiff. In such situation, the plaintiff will have to suffer irreparable loss and more hardship. The balance of convenience lies in favour of the plaintiff, at present. Hence, I answer Point No.1 to 3 in the affirmative.

As to Point No.4 -

19. In view of my affirmative findings to the aforementioned points, the application deserves to be allowed. Hence, I pass following order.

ORDER

1. The application (Exh.5) is hereby allowed.
2. The defendant Nos. 1 to 4A & 4B and any other person on their behalf are temporarily restrained from carrying out further construction in the suit property, till further orders. They are also restrained from alienating the suit property and creating third party interest in it, till further orders.
3. Cost in main cause.

Dictated and pronounced in the open Court.

Place : Wai.
Date : 31.03.2023.

(R.M. Bhende)
2nd Jt. Civil Judge Junior Division,
Wai, Dist. Satara.

CERTIFICATE

“ I certify that this Order uploaded is a true and correct copy of original signed Order”.

Order dictated on : 31.03.2023

Order checked and signed on : 31.03.2023

Uploaded by : S. S. Kumbhar.
Stenographer (Grade-III)

Uploaded on : 31.03.2023