

MHST160015422022

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

Order Below Exh.36
(Passed on 31st March, 2023)

This is an application filed by defendant No.5 to 9 for grant of temporary injunction under Order XXXIX, Rule 1 and 2 of the Civil Procedure Code.

2. Defendant No.5 to 9 submitted that the 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 is the subject matter of suit. 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. Amrale,

3. The suit property is ancestral property of plaintiff and defendant No.1 to 9. It is not yet partitioned. Defendant No.1 to 4A & 4B have carried out construction towards eastern side of the suit property. Said construction is illegal, as there is no prior sanction for it. Even, they are about to carry out further illegal construction over the top rated portion of the suit property. Due to this act, the ancestral field property is adversely getting affected. In the second week of

February, the present defendants visited defendant No.1 to 4A & 4B and requested them to stop the construction, as the suit property is not yet partitioned by mets and bounds. On it, they replied that the suit property exclusively belongs to them and therefore, they can carry out construction therein or alienate it in any manner. They also abused the present defendants.

4. Defendant No.5 to 9 further submitted that defendant No.1 to 4A & 4B are intending to sell the prime location portion of suit property to third person. They have already started negotiations for it. They are in its possession. If they get success in their attempts, it will cause irreparable loss to them. They have good prima facie case and balance of convenience lies in their favour. Therefore, they 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 final decision of the suit by way of temporary injunction.

5. Defendant No.1 to 4A & 4B have filed their reply at Exh.38. They resisted the application by denying its contents. They submitted that the present application has been filed by the present defendants in collusion with the plaintiff so as to tease them. The 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 orally 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). During that partition, the plaintiff and

deceased Bharati relinquished their 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 No. 1 to 4 further submitted that the purchasers of land sold out by the plaintiff and defendant No.5 to 9 have constructed their houses over there. They have not objected for it, till date. Thereafter, defendant No.1 to 4 constructed cattle shade, tin shade and house for their residence. Defendant No.5 to 9 never visited them and therefore, defendant No.1 to 4A & 4B did not abuse them. They are not intending to alienate the suit property and no such negotiations are going on. Defendant No.5 to 9 have not come with clean hands before the Court. They have no prima facie case. If the present application is allowed, it will cause irreparable loss to the defendants No. 1 to 4A & 4B, balance of convenience lies in their favour. Ultimately, they prayed to reject the application.

7. 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 defendant No.5 to 9 have prima facie case ?	Yes.
2.	Whether the balance of convenience lies in their favour ?	Yes.

3.	Whether they would suffer irreparable loss, if the injunction as sought by them is not granted ?	Yes.
4.	What order ?	The application is allowed.

REASONS

8. I have heard Learned Advocate Mr. S.S. More for defendant No.5 to 9. He 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 on 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.

9. On the other hand, Learned Advocate Mr. S.R. Gadhave argued that the four boundaries of suit property is not properly described. The house construction is already completed. The plaintiff has specifically admitted in paragraph No.7 of the application (Exh.5) 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. Defendant No.1 to 4A & 4B have incurred huge money for the development of suit property. They are not intending to alienate the suit property. No such documentary proof has been filed on record. Hence, he prayed to reject the application.

10. Learned Advocate Ms. N.M. Mokashi for the plaintiff 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.

As to point No.1 to 3 -

11. All these points are inter connected with each other. Hence, they are taken for simultaneous discussion so as to avoid repetition. The present application has been filed by the defendants for grant of temporary injunction. This is a suit for partition. Therefore, it is pertinent to mention that every party to the suit is in the role of plaintiff.

12. The plaintiff has also filed application for grant of temporary injunction vide Exh.5. Defendants No. 5 to 9 have admitted the suit claim of plaintiff. In such circumstances, it becomes necessary to peruse the documents available on record so as to decide the present application. 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 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 application (Exh.5) filed by the plaintiff for grant of temporary injunction, 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 and deceased Bharati also relinquished their rights in the suit field property. Moreover, there is no registered deed to that effect.

14. Further, the mutation entries of the suit property 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 defendant No.5 to 9 have 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 applicants have 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 present applicants have balance of convenience in their favour and whether they would suffer irreparable loss, if the injunction as sought by them is not granted.

16. It is contented by the present defendants 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, they have relied upon the photographs & bill filed by the plaintiff 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 defendant No.5 to 9 and the 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 prima facie 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 present applicants have good prima facie case. If the defendants No. 1 to 4A & 4B carry out further construction in the suit property and alienate it, it may affect the rights of the parties and may change the nature of suit property. In such situation, the present applicants and plaintiff will have to suffer irreparable loss and more hardship. The balance of convenience lies in

their favour, 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.36) is hereby allowed.
2. The defendant Nos. 1 to 4A & 4B and any other person on their behalf are temporarily restrained from alienating the suit property in any manner 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