

MHST160022482018



**Order Below Exh.5 in R.C.S. No.
147/2018.**

**(Mansing Haribhau Jadhav Vs. Maruti
Haribhau Jadhav and ors.)**

This is an application filed by plaintiff under Order 39 Rule 1 of the Code of Civil Procedure 1908. Through this application plaintiff seeking temporary injunction against defendant no. 1 and 2 and persons on their behalf that not to obstruct them from the suit property.

Admitted Facts :

2. The suit property is ancestral property of Haribhau Govind Jadhav. The properties other than suit properties that are situated at Mouje Pande, having block nos. 598, 599/1 and 601, properties situated at Mouje Khanapur, having block nos. 459, 909 and 871 are also ancestral properties. The partition of said properties took place between plaintiff and defendant nos. 1 and 2 on 14.01 1988. Said partition deed is registered. The property described in para 1 of plaint is given to share of Haribhau Govind Jadhav. The name of Haribhau was entered in the revenue record of suit property vide partition deed.

Case of plaintiff in short is as under:

3. Plaintiff submitted that Haribhau was old. He had many ailments due to his old age. He never executed any deed. He had no necessity to execute any deed. Hence, the gift-deed dated 12.08.1994 is illegal. It is not binding on plaintiffs. The names of defendants were entered in revenue

record of suit property through mutation entry no. 3675. The notices are not given before entering the names of defendants in revenue record of suit property. But the names of defendants not entered till 2012.

4. Plaintiffs further submitted that Haribhau Jadhav executed mortgage-deed in favour of Anusaya Jadhav, the wife of plaintiff. The name of Anusaya Jadhav is recorded in revenue record of suit property till 2012. The defendant no.1 sold the suit property on 02.11.2011 to Anusaya Jadhav for consideration of Rs.45,000/-. The said sale-deed is of share of 2 aana 8 pai. The possession given through said sale-deed. It is the suit for declaration that the WILL dated 12.08.1994 is illegal and null and void.

5. According to plaintiff, it is necessary to take probate from civil Court. It is necessary to serve notices to legal heirs. But the names of defendants entered through WILL. The plaintiffs have filed RTS appeal no. 204/2013. But said appeal disposed of. The plaintiffs have filed appeal no. 223/2015 to collector Satara. Said appeal is dismissed on 05.10.2016. The plaintiff has filed RTS appeal no.183/2016 in Pune against appeal no.223/2015. But said revision is dismissed. It is observed that plaintiff claim relief against the WILL in civil Court. Complaints regarding WILL dated 12.08.1994 are not within jurisdiction of revenue Courts but Civil Courts. Plaintiffs have prima-facie case. If injunction is granted then irreparable loss caused to them. Hence, plaintiffs have filed this application.

Case of defendant nos.1 and 2 in short is as under:

6. According to defendant nos.1 and 2, plaintiff was doing job in Mumbai. Plaintiff has married with Anusaya in the year 1972. Within six months of marriage, plaintiff resided separately. Hari Govind Jadhav executed mortgage by conditional sale deed with Anusaya Jadhav on 10.07.1980. The possession was given to plaintiff and his wife. The said mortgage is redeemed by Hari Jadhav on 14.01.1988. Since then, the suit property possessed by Hari Jadhav as owner.

7. Defendant nos.1 and 2 submitted that, Hari Jadhav was given all tax of the property which was received in partition. Hari Jadhav has given suit property to defendant nos. 1 and 2 by registered WILL on 12.08.1994. After death of Hari Jadhav, defendant nos. 1 and 2 possessed the suit property vide said WILL. The names of defendant nos. 1 and 2 entered in revenue record of suit property vide mutation entry no. 3675.

8. According to defendant nos.1 and 2, plaintiff has filed an appeal to S.D.O. Wai. Said appeal is against mutation entry no. 3675. That appeal was dismissed. Hence, plaintiff has filed second appeal to Collector. Said appeal again dismissed. Plaintiff filed revision application no.183/2016 to D. R. T. Pune. Said application is also rejected. The defendants possessed the suit property vide WILL. Defendants have submitted that, they cultivated wheat in the suit property. Therefore, plaintiffs have no prima-facie case. Hence, application be rejected.

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

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

REASONS

Point Nos.1 to 3 :

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

11. Ld. Advocate of plaintiff argued that, the WILL is registered on 12.08.1994. But till 2013, said entry cannot be taken. The appeal is dismissed on 05.10.2016, hence plaintiff has filed this suit. The plaintiff possessed the suit property as earlier. The name of Anusaya is recorded in 7/12 extract of block no.414. Similarly, it is necessary to claim probate. Without probate, there is no right.

12. Ld. Advocate of plaintiff further submitted that; defendants accepted Rs. 45,000/-. Hence, provisions of section 57 a and b of Indian Succession Act are applicable. Ld. Advocate

of plaintiff argued that defendant nos. 1 and 2 did not given explanation for delay which is described in para 5 of Exh.29.

13. Per contra Ld. Advocate of defendant nos.1 and 2 in his argument submitted that Hari Jadhav was given all tax of the property which was received in partition. Hence said property was self-acquired property. Hari Jadhav has given suit property to defendant nos. 1 and 2 by registered WILL on 12.08.1994. After death of Hari Jadhav, defendant nos. 1 and 2 possessed the suit property vide said WILL. The names of defendant nos. 1 and 2 entered in revenue record of suit property vide mutation entry no. 3675.

14. Ld. Advocate of defendant nos.1 and 2 argued that there is inconsistent pleading. This is affected by sections 5 and 30 of Hindu Succession Act. Hari Govind Jadhav executed mortgage by conditional sale deed with Anusaya Jadhav on 10.07.1980. The possession was given to plaintiff and his wife. The said mortgage is redeemed by Hari Jadhav on 14.01.1988. Since then, the suit property possessed by Hari Jadhav as owner. According to plaintiff, Anusaya is purchaser of suit property. Hence, said sale deed should be registered according to section 54 of Transfer of Property Act and section 17 of Registration Act.

15. Ld. Advocate of defendant nos. 1 and 2 argued that, according to section 213(1) of Indian Succession Act probate is not required. He further argued that whether plaintiff has right to dispose of property. Similarly, medical evidence of condition of Haribhau is not on record. Similarly, it is argued by plaintiff that Haribhau died in the year 1995. The WILL is in the year

1994. But the entry of that WILL is not recorded in 1994. Plaintiff has possessed the suit property as heirs of Haribhau.

16. It is seen that according to section 213(1) of Indian Succession Act 1925, the probate is required in Mumbai, Calcutta and Madras. It is also seen that whether plaintiff has right to dispose of property, similarly, medical evidence about condition of Haribhau is matter of evidence. Application of provisions of Succession Act, Registration Act also required detail evidence.

17. On perusal of Exh.8, prima-facie it seems that the entry of name of Anusaya is reduced. On perusal of record of the case, it is seen that at Exh.4/5 the document which prima-facie shows that defendant no.1 accepted Rs.45,000/-. But defendant no.1 and 2 denied the same. Similarly, prima-facie it shows that there is reconveyance deed for Rs.6,000/- between Hari Jadhav and Anusaya Jadhav. It requires detail evidence. It is a matter of trial.

18. Ld. Advocate of defendant nos. 1 and 2 relied upon following authorities: **1. Leelavati Chaudhari Vs. Pitambar Attarde, 2018(3) ALL MR 202, 2. Manoharlal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, (1962) AIR (SC) 527**

Similarly, Ld. Advocate of plaintiff relied upon following authority: **Raj Kumar and Ors Vs. Surinder Pal Sharma, AIROnline 2019 SC 2143.**

19. I have gone through these cases. These cases are related to Indian Succession Act and Registration Act. These cases are taken into consideration at proper stage.

20. 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 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.

21. On perusal of record of the case, prima-facie it is seen that, at Exh. 8 the 7/12 extract of block no. 414. The names of defendant nos. 1 and 2 are recorded in same. Similarly, Plaintiff has filed mutation entry of names of defendant nos.1 and 2, which is at Exh.4/1, WILL dated 12.08.1994 at Exh.4/2, partition deed dated 14.01.1988 at Exh.4/3, power of attorney at Exh. 4/4, Order of Collector, Satara at Exh.4/6. Prima-facie it is seen that names of defendant nos. 1 and 2 were entered in the revenue records of block no. 414.

22. It is seen that prima-facie the suit property is in the name of defendants no.1 and 2. It is also seen that section 157 of Maharashtra Land Revenue Code 1966, there is presumption of correctness of revenue entries. An entry in the record of rights, and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefore.

23. Considering above discussion, I answer point nos. 1, 2 and 3 are in negative. In answer to point no. 4, I pass following order:

ORDER

The application is rejected.

Date : 22.08.2023

Place : Wai.

(S. S. Kulkarni)

4th Jt. Civil Judge Junior Division ,Wai.