

MHST160022482018



**Order Below Exh.26 in R.C.S. No.
147/2018.**

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

This is an application filed by defendant nos.1 and 2 under Order 39 Rule 1 of the Code of Civil Procedure 1908. Through this application defendant nos.1 and 2 seeking temporary injunction against plaintiff and persons on his 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 defendant nos.1 and 2 in short is as under:

3. Defendant nos.1 and 2 submitted that the suit is for declaration and partition similarly separate possession of suit properties.

4. 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.

5. 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.

6. 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.

7. Defendant nos.1 and 2 have submitted that, they cultivated wheat in the suit property. Plaintiff threatened them that they will take crop from the suit property. Hence, defendant nos. 1 and 2 have filed this application. If plaintiff obstruct them from possessing suit property, then there is irreparable loss caused to them. The defendant nos.1 and 2 has prima-facie case, balance of convenience lies in favour of them. Hence, defendant nos.1 and 2 have prayed for temporary injunction.

Case of plaintiff in short is as under:

8. Plaintiff contended that he has share in the suit property described by defendant nos. 1 and 2. It is the suit for declaration that the WILL dated 12.08.1994 is illegal and null and void.

9. According to plaintiff, orders passed by revenue Courts are not final. Complaints regarding WILL dated 12.08.1994 are not within jurisdiction of revenue Courts but Civil Courts. There is no cause of action for this application. Defendant nos.1 and 2 have no prima-facie case. If injunction is granted then irreparable loss caused to him. Hence, application deserves to be rejected.

10. 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 defendant no.2 has prima facie case in his favour?	-	No.
2.	Whether balance of convenience lies in favour of defendant no.2?	-	No.
3.	Whether defendant no.2 will suffer irreparable loss, if injunction is refused?	-	No.
4.	What Order?	-	Application is rejected.

REASONS**Point Nos.1 to 3 :**

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

12. 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.

13. 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.

14. Per contra 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.

15. 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.

16. 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.

17. 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 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. Similarly, on perusal of Exh.8, prima-facie it seems that the entry of name of Anusaya is reduced.

18. 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. They filed on record the reconveyance deed come sale deed which is at Exh.36/1, between Haribhau and Anusaya. Prima-facie it shows that there is reconveyance deed for Rs.6,000/- between Hari Jadhav and Anusaya Jadhav. But it requires detail evidence. It is a matter of trial.

19. 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*.

20. 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.

21. 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.

22. 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.

23. Defendant nos. 1 and 2 have filed the affidavits of Mahadev Mhapaji Jadhav and Dhansing Manasing Jadhav along with their verified copies of aadhar card. Mahadev submitted that he is co-sharer of block no.414. Similarly, Dhansing is adjacent to block no. 414. His block no. is 413.

24. It is also taking into consideration that; defendant nos.1 and 2 did not show how plaintiff obstruct them, how plaintiff threatened them that they will take crop from the suit property. On perusal of Exh.26, it is seen that the application dated 06.02.2020. Hence, the application for temporary injunction is infructuous.

25. 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.