

R.C.S. No.541/2024

Tarabai Vs.Ranjana & Ors.,

ORDER BELOW EXH.05

(CNRMHST180011622024)

The plaintiff/applicant filed this application under Order XXXIX, rule 1 and 2 of the Code of Civil Procedure for granting temporary injunction against all defendants.

2. I read an application and the reply filed by defendant no. 1 & 4 at Exh. 20. Defendant no. 5 to 7 also filed pursis at Exh. 28 and adopted the reply of defendant no. 1 to 4 at Exh.20. Heard the learned counsel for defendant no. 1 to 7 Adv. Shri. N.M. Wadikar. The learned counsel for the plaintiff Adv. Shri. P.D. Karande is present before the Court, but he has not argued upon injunction application at Exh. 5, even though sufficient opportunity is granted. The plaintiff is also absent when called. However, defendant no. 4 Patalu Gaikwad is present before the Court.

The plaintiff filed this instant application and submitted that, the real owner of field block no. 711/1/1 was Jotibhau Suryawanshi, who died on 13.01.1951. After the death of Jotibhau Suryawanshi, the name of plaintiff, Hirabai and Sagunabai were entered in the revenue record of the suit property, vide mutation entry no. 6193 dated 29.08.1964. The plaintiff is the daughter, Hirabai was the wife and Sagunabai was the mother of Jotibhau Suryawanshi. After the death of Jotibhau Suryawanshi, the plaintiff, Hirabai and Sagunabai became the owner and possessor of the field block no. 711/1/1 situated at-Dahiwadi, Tal-Man, Dist-Satara. (This is hereinafter referred as the suit property).

It is also contention of plaintiff that, in the year 1971, the

marriage of the plaintiff was performed. On 03.10.1989, the plaintiff sold six hector land of the suit property to defendant no.1 and 2 for total consideration amount of Rs. 1,10,000/-. The plaintiff also executed registered sale deed bearing no. 927/1989 in the right of defendant no.1 and 2. Accordingly, the name of defendant no. 1 and 2 were entered in the revenue record of suit property vide mutation entry no. 1105. Subsequently, the plaintiff also sold 21 R land of the suit property to defendant no. 3 on 04.10.2007, by virtue of sale deed bearing no. 2509/2007 and thereafter, the name of defendant no. 3 was entered in the revenue record of suit property vide mutation entry no. 2107. The mother of the plaintiff namely Hirabai died on 03.09.2020. The grandmother of the plaintiff namely Sagunabai died on 14.09.1989.

It is also further contention of the plaintiff that, the plaintiff is illiterate women. Defendant no. 1 to 3 took disadvantage of illiteracy of the plaintiff and false sale deed was created. Hindu Succession Act, was not in existence in the year 1951. The father of the plaintiff died in the year 1951. However, the plaintiff being daughter was not entitled to succeed in the suit property. Defendant no. 1 to 3 was having no right to succeed in the suit property before the enactment of Hindu Succession Act. The mother and grand-mother of the plaintiff were only right to succeed in the suit property. The sale deed executed by defendant no. 1 to 3 with the plaintiff was absolute void and invalid. Therefore, the plaintiff filed present suit against defendant and sought the declaration that, the sale deed dated 03.10.1989 and 04.10.2007 are illegal, null and void and not binding upon the share of the plaintiff. The plaintiff also sought the temporary injunction that, defendant no. 1 to 3 shall not alienate suit properties to other person nor create third party interest till the decision of this suit.

3. Defendant no. 1 to 4 appeared through their counsel and filed the reply at Exh. 20 and opposed to this application. Defendant no. 3 and 5 to 7 filed the pursis at Exh. 28 and adopted the written statement of defendant no. 1 and 4 at Exh. 20. Defendant no. 1 to 7 by way of written statement at Exh. 20 opposed to this application on the ground that, after the death of Jotibhau Suryawanshi, the plaintiff being only daughter inherited in the suit property. The plaintiff herself executed registered sale deed in the right of defendant no. 1 and 2 on 03.10.1989. The plaintiff herself executed registered sale deed in the right of defendant no. 3 on 04.10.2007. Defendant no. 1 and 2 became the owner and possessor of six hector land of the suit property by virtue of sale deed dated 03.10.1989. Defendant no. 3 also became the owner and possessor of suit property by virtue of sale deed dated 04.10.2007. The plaintiff pleaded that, the mother and grand-mother of the plaintiff died. However, after demise of mother and grand-mother of the plaintiff, the plaintiff only became the owner and possessor of the suit property by inheritance. They also submitted that, the plaintiff has not filed the suit within the period of limitation and therefore, the plaintiff are not entitled for injunction. Hence, they prayed to reject the application.

4. The following points arose for my determination and I recorded my findings thereon for the reasons given as under.

Sr. No.	Points	Findings
1.	Whether the plaintiff/applicant is having prima facie strong case in her favour?	No.
2.	Whether the balance of convenience lies in favour of the plaintiff/applicant?	No.

3.	Whether the irreparable loss will be caused to the plaintiff, if the temporary injunction is refused?	No.
4.	What Order?	As per final order.

REASONS

5. In order to establish the claim against defendants, the plaintiff produced some documents along-with the plaint i.e. the true copy of 7x12 extract of field block no.711/1/1, the true copy of mutation letter bearing mutation entry no. 6193, the copy of legal notice dated 08.11.2024, the xerox copy of the sale deed bearing no. 927/1989 dated 03.10.1989 and the xerox copy of the sale deed bearing no. 2509/2007 dated 04.10.2007, the letter of Chief Officer, Tahsildar, lay-out map of the suit property, public notice contained in newspaper and other relevant documents.

On the contrary, defendants also produced some documents on record i.e. certified copy of sale deed bearing no. 17/1990 dated 02.01.1990 between Bhikoba Murari Mane and Tarabai Joti Suryawanshi, the certified copy of sale deed bearing no.19/1990 dated 04.01.1990 between Bhikoba Murari Mane and Tarabai Joti Suryawanshi and other relevant documents.

AS TO POINT NO. 1 TO 3

6. It is the submission of the plaintiff that, the real owner of the suit property was Jotibhau Suryawanshi. Jotibhau died on 13.01.1951. Hirabai is the mother and Sagunabai is the grand-mother of the plaintiff. The plaintiff is only daughter of Jotibhau. However, after the death of Jotibhau Suryawanshi, Hirabai and Sagunabai were entitled to become

the owner of the suit property. However, the plaintiff was not the owner of the suit property on the ground that, the daughter was not entitled to succeed in the suit property before enactment of Hindu Succession Act, 1956. However, defendant no. 1 to 3 took the disadvantage of illiteracy of the plaintiff and executed the registered sale deed on 03.10.1989 and 04.10.2007 in their favour. The sale deeds dated 03.10.1989 and 04.10.2007 are null and void, illegal and not binding upon the plaintiff. Now, defendant no. 1 to 7 are intending to sell the suit property to other person. Therefore, the plaintiff sought the temporary injunction that, defendant no. 1 to 7 be restrained to alienate the suit property to other person.

7. Today, the learned counsel for the plaintiff Adv. Shri. P.D. Karande submitted that, the counsel of High Court want to argue upon injunction application below Exh.5. However, the record shows that, Adv. Shri. P.D. Karande is only counsel of the plaintiff. There is no vakalatnama on record of the counsel of High Court. On previous date, the learned counsel for the plaintiff Adv. Shri. P. D. Karande prayed to adjourn the matter on the ground that, he will argue on next date. However, today he has not argued upon the injunction application below Exh.5 and further submitted that, the counsel of High Court want to argue upon injunction application, wherein there is no vakalatnama of that counsel. It appears from the record that, the plaintiff is intending to prolong this suit on this or that ground. The plaintiff also filed adjournment application below Exh. 37, but the same application is rejected.

Heard the learned counsel for defendant no. 1 to 7 Adv. Shri. N.M. Wadikar. The learned counsel for defendants Adv. Shri N.M.

Wadikar submitted that, admittedly Jotibhau Suryawanshi was the real owner of the suit property. However, after the death of Jotibhau Suryawanshi, the plaintiff, being the daughter became the owner and possessor of the suit property. Hirabai and Sagunabai died. There is no any son to Jotibhau Suryawanshi and therefore, the plaintiff became the owner and possessor of the suit property. He also further submitted that, on 03.10.1989, the plaintiff herself executed registered sale deed in the right of defendant no. 1 and 2 for six hector land of suit property for total consideration amount of Rs. 1,10,000/-. The plaintiff herself executed registered sale deed in the right of defendant no. 3 on 04.10.2007. Now, the plaintiff can not claimed the declaration that the sale deed dated 03.10.1989 and 04.10.2007 are illegal, void and not binding upon the plaintiff. He also further submitted that, the plaintiff has not filed the suit within the period of limitation. The plaintiff also is not entitled to sought the decree of declaration that, the sale deed dated 03.10.1989 and 04.10.2007 are illegal and void.

8. The plaintiff is not entitled for the substantive relief and therefore, the plaintiff can not seek consequential relief. He is also relied upon some authorities i.e. **Vineeta Sharma Vs. Rakesh Sharma** reported in AIR 2020 Supreme Court 3717, **Kashi Math Samsthan Vs. Srimad Sudhindra Thirtha Swamy** reported in AIR SC 2010 0 296 and **Jumma Masjid Mercara Vs. Kodimaniandi A Deviah**, reported in AIR SC 1962 0 847 and submitted that the Hon'ble Supreme Court in the case of **Vineeta Sharam Vs. Rakesh Sharma** held that, the provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities. (ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with

savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004. (iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

He also submitted that, in para no. 13 of the judgment of *Kashi Math Samsthan Vs. Srimad Sudhindra Thirtha Swamy*, it is mentioned that, it is well settled law that, in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted. Therefore, keeping this principle in mind, let us now see, whether appellant has been able to prove prima facie case to get an order of injunction during the pendency of the two appeals in the High Court.

He also submitted that, in para no. 6 of the judgment in the case of *Jumma Masjid Mercara Vs. Kodimaniandi A Deviah*, it is mentioned that, this reasoning is open to the criticism that it ignores the principle underlying Section 43. That section embodies, as already stated, a rule of estoppel and enacts that a person who make a presentation shall not be heard to allege the contrary as against a person

who acts on that representation. The preponderance of judicial opinion is in favour of the view taken by the Madras High Court in *Alamanaya Kunigari Nabi Sab Vs. Murukuti Papiah*(3), and approved by the Full bench in the decision now under appeal. In our judgment, the interpretation placed on Section 43 in those decision correct and the contrary opinion is erroneous. We accordingly, hold that when a person transfer property representing that he has a present interest therein, whereas he has, in fact, only as per succession is the transferee is entitled to the benefit of Section 43, if he has taken the transfer on the faith of that representation and for consideration. In the present case, Santhappa, the vendor in Ex. III, represented that he was entitled to the property in prasenti, and it has been found that the purchaser entered into the transaction action on that representation. He therefore, acquired title to the properties under Section 44 of the Transfer of Property Act, when Santhappa became in titulo on the death of Gangamma on 17.02.1933, and the subsequent dealing with them by Santhappa by way of release under Ex.A did not operate to vest any title in the appellant.

He is also relied upon para no. 170 of the Mulla's Hindu Law. Para no. 170 deal with property inherited by female from males in the Bombay State. It provides that, besides the five females who can inherit to a male in all schools, namely the widow, daughter, mother, father's mother and father's father's mother, the Bombay School recognizes other females as heirs namely, daughters of descendants and ascendants and collaterals within five degrees, and widows of gotraja spaindas. These include the three females specifically mentioned as heirs in the Hindu Law of Inheritance(Amendment) Act, 1929, namely, the son's daughter, the daughter's daughter, both these being daughters of descendants, and the sister, she being a daughter of an ascendant. As

regard property inherited from males, female heirs under the Bombay school are divided into two classes, namely, those who come into the gotra of the deceased owner, by marriage, i.e. the wife of the deceased and the wives of his sapindas and samanodakas and those who are born in the gotra of the deceased owner, but pass by marriage into a different gotra, and their daughters. This class includes a daughter, son's daughter, daughter's daughter, sister, niece, grandniece, father's sister and the like. The son's daughter, daughter's daughter, and sister are expressly mentioned as heirs in the Hindu Law of Inheritance(Amendment) Act, 1929 and the rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004. and Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

So on reading the aforesaid authorities, the Hon'ble Supreme Court held that, the daughter became the coparcenar not from the date of amendment made in Section 6 of the Hindu Succession Act, 1956, but she became the coparcenar from the enactment of Hindu Succession Act, 1956 and therefore, the daughter is entitled to claim share, interest in the properties likely to be son.

9. In this present suit, it is the admitted position that, the plaintiff herself alienated six hector land of the suit property to defendant no. 1 and 2 by execution of registered sale deed dated 03.10.1989 and she also executed registered sale deed in the right of defendant no. 3 for 21 R land of suit property on 04.10.2007 presuming that, the plaintiff became the owner and possessor of the suit property

after the death of her father Jotibhau Suryawanshi. However, the plaintiff has not filed any suit and challenged the sale deed dated 03.10.1989 and 04.10.2007 till the filing of this suit.

10. In view of this, I also read Article 56, 57 and 58 of the Limitation Act, 1963. Article 58 provides that, the party may obtain any other declaration within three years, when the right to sue first accrues. So far as Article 53 of the Limitation Act, is concerned, it was required to file the suit for the declaration that the sale deeds dated 03.10.1989 and 04.10.2007 are illegal, void and not binding upon the plaintiff within three years from her knowledge. It is not the contention of the plaintiff that, the plaintiff was unaware about the execution of sale deeds dated 03.10.1989 and 04.10.2007. On the contrary, the plaintiff herself executed registered sale deeds in the right of defendant no. 1 to 3 on 03.10.1989 and 04.10.2007.

11. Under this circumstances, the plaintiff ought to have file the suit for the declaration within three years from the sale deed dated 03.10.1989. However, the plaintiff has not sought the declaration that the sale deed is illegal and void within the period of limitation. Therefore, it is my considered opinion that, the plaintiff can not ask for declaration that the sale deed dated 03.10.1989 and 04.10.2007 are illegal, void and not binding upon the plaintiff beyond the period of limitation.

12. I also read Section 3 of the Limitation Act, 1963. Section 3 deals with Bar of limitation. It provides that, subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

Therefore, on reading Article 58 read with Section 3 of the Limitation Act, 1963, it prima facie appears that, the plaintiff has not filed the suit within the period of limitation. Under this circumstances, it is my considered opinion that, the plaintiff is not entitled to substantive relief which is claimed by the plaintiff in the present suit.

13. The question regarding as to whether the plaintiff was owner and possessor of the suit property at the time of execution of sale deeds dated 03.10.1989 and 04.10.2007 will be decided on the merit of case. However, prima facie it appears that, the plaintiff is not entitled for substantive relief. When the plaintiff is not entitled for the substantive relief then the plaintiff is not entitled for the consequential relief i.e. for claiming temporary injunction against defendants. Therefore, it prima facie appears that, the plaintiff is having no strong prima facie case against defendants. The balance of convenience is not lies in faovur of the plaintiff. No irreparable loss will be caused to the plaintiff, if the injunction is refused. On the contrary, irreparable loss will be caused to defendants, if the injunction application is allowed. I found no substance in the application. In the result, I answered to point no. 1 to 3 as negative.

14. In view of the above discussion, findings and reasons, I am of the opinion that, the plaintiff is not entitled for temporary injunction against defendants. Accordingly, I proceed to pass the following order.

ORDER

- 1) The application at Exh. 5 is rejected.
- 2) Parties to take note of it.

Vaduj.
Date: 28.03.2025

(D.D. Fulzele)
Civil Judge Senior Division, Vaduj.

