

R.C.S. No. 373/2018

Rukamini & Ors., Vs. Siddharath

ORDER BELOW EXH.5

(CNR No.:MHST180019022018)

Plaintiffs filed this instant application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure for granting temporary injunction. I read an application and the reply/written statement of the defendant at Exh. 17. Perused the record. Heard the learned counsel for plaintiffs Adv.Shri. P.D. Sawant and the learned counsel for the defendant Adv. Shri. P.N. Patil.

2. Plaintiffs filed this instant application and submitted that, the grampanchayat property no. 106 admeasuring area 16x11 is the ancestral property of plaintiffs and the defendant, which is situated at-Yeliv, Tal-Khatv, Dist-Satara (This is hereinafter referred as the suit property).

It is the contention of plaintiffs that, the real owner of the suit property was Vitthal Todake. Sambhaji, Babasaheb, Ashok, Sidharth, Vijay and Rajendra are real sons of Vitthal Todake. Plaintiff no. 1 is the wife of Sambhaji Todake. Plaintiff no. 2 Satish is the son of Sambhaji. The defendant is the paternal uncle of plaintiff no.2. It is further contention of plaintiffs that, the suit property has not been partitioned between the legal heirs of Vitthal Todake. The suit property is in common between plaintiffs and the defendant. They are having joint possession over the suit property. However, on

04.12.2018, the defendant demolished the old construction from the suit property and started the construction of new building. Plaintiffs opposed to the defendant for the construction of new building. However, the defendant refused for the same. Therefore, plaintiffs filed this suit for perpetual injunction, restraining to the defendant that, the defendant shall not demolish any wall of old construction of suit property. Plaintiffs also claimed temporary injunction that, the defendant shall not construct any building nor demolish any wall of the old building from the suit property.

3. The defendant appeared and filed the reply at Exh. 17 and opposed to this application on the ground that, the suit property is the common property of plaintiffs and the defendant. However, the old building of the suit property is in actual possession of the defendant. The slab of old building became damage and therefore, the defendant with the consent of other co-sharers started the constructions in the suit property. The defendant denied the fact that, the suit property is the joint property of plaintiffs and the defendant. Therefore, the defendant 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 plaintiffs/applicants are having prima facie case in their favour?	No.

2.	Whether the balance of convenience lies in favour of plaintiffs/applicants?	No.
3.	Whether the irreparable loss will be caused to plaintiffs, if the temporary injunction is refused?	No.
4.	What Order?	As per final order.

REASONS

5. In order to establish the claim against the defendant, plaintiffs filed some documents along-with the plaint. Plaintiffs are relied upon the true copy of grampanchyat namuna no. 8 regarding house property no. 106, true copy of grampanchayat namuna no. 8 regarding house property no. 105, the true copy of grampanchayat namuna no. 8 regarding house property no. 105/1, the true copy of grampanchayat namuna no. 8 regarding house property no. 104, photographs and other relevant documents.

On the contrary, the defendant has not produced any documents in order to support his claim.

AS TO POINT NO. 1 TO 3 :-

6. In order to decide the temporary injunction application , it is necessary to see, as to facts which are not in controversy between the parties. It is also necessary to see as to who is in possession over the suit property.

In this present suit, the defendant admitted the fact that,

the suit property is the ancestral property of plaintiffs and the defendant. It is not the case of the defendant that the suit property has been partitioned between legal heirs. However, the defendant claimed that, other persons are also co-sharers of the suit property.

7. On perusal of record, particularly, the true copy of grampanchayat namuna no. 8 regarding suit property, it appears that, the names of plaintiffs and the defendant have been mentioned in the said documents. The defendant claimed that, the suit property is not the common property and denied the allegation made by plaintiffs. However, it is not the case of the defendant that the suit property is absolute property of the defendant. On the other hand, the defendant pleaded that the defendant started the construction in the suit property by taking the consent of other co-sharers. So, on pleadings of the defendant, it prima facie appears that, the suit property is ancestral property of plaintiffs and the defendant.

8. However, in this present suit, plaintiffs have not claimed partition and separate possession of suit property. On the other hand, plaintiffs claimed the perpetual injunction that, the defendant shall not demolish any wall of old construction of suit property nor construct anything there on. In fact, plaintiffs were required to file suit for partition and separate possession, if there is dispute in between plaintiffs and the defendant. No any purpose would be served, if the injunction is granted that the defendant shall not construct anything in the suit property.

9. So, on perusal of entire record, it is found that, plaintiffs filed this suit only to obtain the decree of perpetual injunction to restrain to the defendant that defendant shall not demolish any wall of the suit property nor construct anything in the suit property. If the defendant construct any building or anything in the suit property with the consent of the other co-sharers including plaintiffs, then, no irreparable loss will be caused to plaintiffs. If plaintiffs are opposing to construct new house or building in the suit property, then, plaintiffs are required to file suit for partition and separate possession. So, I found that, prima facie plaintiffs are having no strong case. No irreparable loss will be caused to plaintiffs, if the injunction is refused. Balance of convenience is also not lies in favour of plaintiffs. I found no substance in the application. In the result, I answered to issue no. 1 to 3 as negative.

10. In view of the above discussion, findings and reasons, I am of the opinion that, plaintiffs are not entitled to claim temporary injunction against defendants. Accordingly, I proceed to pass the following order.

ORDER

- 1) The application at Exh. 5 is rejected.
- 2) Plaintiffs are further directed to adduce their evidence (if any), after framing issues.
- 3) Parties to take note of it.

Vaduj.
Date: 28.06.2024.

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