



RCS No. 64/2019

Karuna + 02 vs Sakharam + 02

CNR No. MHWS080007482019

ORDER BELOW EXH-08

Plaintiffs filed this suit for Partition and Separate Possession on dated 16.07.2019. Then, vide this application dated 28.01.2020, they seeking temporary injunction against defendants for not to create any third party interest by way of sale deed, Issarchitthi, Mortgage and Relinquish Deed etc. in suit property A and B mentioned in para no. 01 of plaint till the decision of suit.

02 On the other hand record reveals that defendants were served vide exh. 09. 10 and 11 on dated 13.08.2019, 02. 08. 2019 and 05.08.2019 respectively, but only defendant no. 01 was appeared but failed to file his W.S. on record. He prayed for granting legal aid by application, but failed to file documents of income proof, so no legal aid advocate was given to him. So my learned predecessor passed no W.S. order against defendant no. 01 and exparte order against defendant no. 02 and 03 on dated 28.01.2020.

03 Then defendant no.01 appointed lawyer vide exh. 12 and vide application below exh. 14, and defendant no. 02 appointed lawyer vide exh. 12 and vide exh. 17 prayed for taking their W.S. on record, which were allowed by imposing costs. But no compliance has been made. Then plaintiff filed pursis vide exh. 18 for taking action against defendant no. 01 and 02. So, the applications below exh. 14 and 17 were seen and filed. Then

defendant no. 01 filed application below Exh-20, for taking his W.S. on record, which was also allowed by imposing costs. But the cost is not paid by him.

04 Similarly, defendant no.02 also vide application below exh. 24 prayed for taking his W.S. on record as he was ready to comply the order below Exh. 17. That application was allowed by imposing costs. On compliance, his W.S. was taken on record at Exh-25 on dated 12.01.2024. He admitted relationship and suit property-A is ancestral property but denied the contention in respect of suit property-B. He stated that it is his self acquired property. Whereas suit property-A is already partitioned on dated 08.05.2012. So he prayed for rejection of this application.

05 Moreover, defendant no. 02 also filed counter claim along with W.S. in respect of partition and separate possession of his 1/4th share in three house properties. According to him, plaintiffs not claiming their share in those house properties, so, he constrain to file counter claim in that regard in which he is also having 1/4th undivided share. But defendant no. 02 not paid the necessary court fees in respect of counter claim, so the matter kept for order. Then defendant no. 02 paid the necessary court fees in respect of his counter claim. It also appears that both the parties took too much time for settlement, but in-spite of several attempt, the compromise or negotiations will not arrived between parties.

06 Considering submissions of both the parties and their learned advocates and documents filed by them, following points arise for my determination. I record my findings on them as under.

| | <u>Points</u> | <u>Findings</u> |
|---|--|------------------------------|
| 1 | Whether any prima facie case is made out ? | Yes. |
| 2 | In whose favour, the balance of convenience lies ? | In favour of the plaintiffs. |
| 3 | To whom, irreparable loss would be caused ? | To the plaintiffs. |
| 4 | What order ? | The application is allowed. |

REASONS

As to Point Nos.1 to 4 :

07 According to plaintiffs, the **first** property is adm. 04 H. 32 R. land in Gat no. 473 with full share, situated at village Haral Tq. Risod Dist. Washim bounded as to the East-land in Gat no.462, to the West-land in Gat no.474, 472, 471, 470, to the North-land in Gat no. 459 and to the South-land in Gat no.463. (Hereinafter referred as **suit property-A** only.) **Second** property is adm. 10 H. 02 R. land in Gat no. 318 out of 03 H. 38 R. share, situated at village Sawad Tq. Risod Dist. Washim bounded as to the East-land in Gat no.261 and Dam, to the West-land in Gat no. 317 & 314, to the North-land in Gat no.176 and on the South-Risod-Haral Road. (Hereinafter referred as **suit property-B** only)

08 According to plaintiffs the suit Property-A is ancestral property of plaintiffs and defendants. The suit property-B is a joint family property of plaintiffs and defendant no.01 and 02, which purchased by joint family income by husband of plaintiff no. 01, and defendant no. 01 and 02 with all right of easement, privilege and liberties appurtenant thereto, and with all the trees and standing crops.

09 The defendant no.01 and 02 are uncle of plaintiff no.02 and 03 and brothers of the husband of plaintiff no.01. Defendant no.03 is the sister of defendant no. 01 and 02. Madhav, the husband of plaintiff no. 01 was in the service. So, his family was residing out of station from village Haral. But, plaintiffs and defendants were jointly cultivating the suit property. Madhav died on 19.12.2012. Then also plaintiffs jointly cultivating the suit property with defendants.

10 But since January 2019, plaintiffs several time went to the village Haral and every time they requested defendant no.01 for their 1/4th share in Suit Property-A and 1/3 share in suit Property-B. But every time defendant no.01 denied partition and separate possession. So plaintiffs filed this suit for partition and separate possession for their share in ancestral and joint family property of the plaintiffs and defendants.

11 On dated 27.01.2020, plaintiffs received information from the villagers of Sawad and Haral that defendant no.01 and 02 trying to create the third party interest by way of sale deed, issarchithi or relinquished deed by which the plaintiffs may be suffered irreparable loss which cannot be a compensated by any means. So, they prayed for granting temporary injunction till the decision of the suit.

12 On the contrary defendant no. 02 vide W.S. Exh. 25, admitted relationship and description of the suit property-A and its boundaries. But denied the suit property-B. According to him, the suit property-B is purchased by him, and defendant no.01 and Madhav and defendant's sister in law Rambhau Hiranman Padghan

R/o Raitalwadi Tq. Risod by way of registered Sale-Deed on dated 21.02.1972 in consideration of Rs. 4000/- only from Yadav Ganpati Billari and Namdev Ganpati Billari.

13 By way of Sale-Deed, defendants are in possession and in cultivation. So that property is the self acquired property of the defendants. Out of it, Rambhau Hiranman Padghan sold his 04 acres land to Datta Gyanuji Pandit. Prior to selling that, 15 acres and 39 R land partitioned among the defendants to the extent of 01 H. 62 R. each. On northern side Madhav Punjaji and thereafter on the northern side defendant no.01 to the extent of 04 acres of land, on northern side defendant no.02 to the extent 04 acres of land and Rambhau Hiranman Padghan was allotted land North South 04 acres land. So, the defendant are in possession and cultivation.

14 According to him, suit property A is partitioned among four legal heirs i.e. defendant no. 01 to 03 and husband of plaintiff no. 01 to the extent of 04 H. 38 R each as on the northern side there is land in possession and cultivation of defendant no. 01 to the extent of 02 Acres and 29.05 Gunthe in short 01 H. 9.5 R land. Adjoining to southern side of land of defendant no. 01, there is 01. H. 9.5 R land in possession and cultivation of defendant no.03. Adjoining to the land of defendant no. 03, there is 01. H. 9.5 R land in possession and cultivation of Madhav i.e. husband of plaintiff no. 01. Adjoining to the southern side of land of Madhav, there is land in possession and cultivation of defendant no.02. This partition is effected on dated 08.05.2012. Defendant no.01 further partitioned his land in between his six heirs by way of Vatniparta inter-Se. So he prayed for rejection of this application.

15 Apart from this, defendant no. 02 also filed counter claim against plaintiffs and other defendants for partition of three house properties mentioned in the counter claim stating that he is having 1/4th share in each house property. According to him, after filing this suit, upon receipt of notice dated 02.09.2019, he came to know that, plaintiff no. 01 left three house properties and not claim share in house properties. So, he constrained to file this suit com counter claim in respect of house properties.

16 Plaintiff relied upon certified copy of 07/12 extract of Gat no. 473 along with Namuna 8-A of Gat no. 473 and Namuna 6-A of Ferfar no.1952 of village Haral. They also filed certified copy of 07/12 extract of Gat no. 318 along with Namuna 8-A of Gat no.318 and Namuna 6-A of Ferfar no. 1336 of village Haral. copy of Fitness certificate of plaintiff no. 01 given by medical superintendent of Government Hospital Dound and copy of Receipt of Government Hospital, Pune dated 11.01.2024. On the other hand, defendant no. 02 relied upon copy of Sale-Deed on dated 21.02.1972, he also field copy of Watanipatra dated 08.05.2012, copy of Watanipatra in between defendant no. 01 and his legal heirs dated 08.05.2012, he also filed copy of three house properties mentioned in counter claim.

17 Heard both the parties at length. Considering submission by both parties, it prima facie appears that the respective parties are close relatives of each other. According to plaintiffs the suit property A and suit property B is the ancestral and joint family property of plaintiffs and defendants. But according to defendant no. 02 the suit property A is already

partitioned and suit property B is his self acquired property. But perusal of revenue documents like, the 7/12 extracts, Namuna 08A, Namuna 06A and Ferfar filed by plaintiffs reveals that both the suit properties are shown jointly in the name of plaintiffs and defendants.

18 The death of Madhav is admitted by defendant no. 02. defendant no. 03 not appeared in the suit. Whereas defendant no. 01 though appeared but in-spite of giving opportunities failed to comply the order. So his W.S. is not taken on record. Similarly, though defendant no. 02 filed counter Claim, but the house properties in counter claim is different than the suit properties in the plaint. Moreover, defendant no. 02 did not file any interim application for temporary injunction.

19 Though defendant no.02 stated that suit property B is his self acquired property, but he only filed copy of sale deed no. 375/1972, which reveals that the land in Sy. no. 97 was jointly purchased by defendant no. 01 and 02 along with the husband of plaintiff no. 01. moreover, though defendant no.02 filed copy of partition deed dated 08.05.2012, but it does not bear the signature of Madhav, who alleged to be died on dated 19,12.2012. According to learned advocate for defendant no. 02, the signature of plaintiff no. 01 was obtained on behalf of Madhav. But no satisfactory answer was given for taking signature of plaintiff no.01 instead of Madhav.

20 Moreover, though defendant no. 02 relied upon both the partition deed, for a while if the partition deeds are

considered, but it prima facie appears that the partition is not effected. Because the crystallization of share is not appeared in revenue record. The revenue documents are still showing the plaintiffs and defendants as the common sharer in respect of both the suit properties in plaint. Though defendant no. 02 filed counter claim, but he did not file any application for temporary injunction.

21 Considering the facts and circumstances of the case, it appears that though the partition deeds are filed on record, but its implementation is doubtful and revenue record are in the name of both the parties. Considering the death of husband of plaintiff no. 01 and the relationship between parties, there is possibility of alienation of suit property A and suit property B. So, plaintiffs prima facie established their case. In such circumstances if the defendants will not restrained from creating third party interest in respect of suit property-A and suit property-B, it will cause irreparable loss to plaintiffs. Thus, considering revenue record, the balance of convenience is also in favour of plaintiffs

22 Moreover, this is the primary stage of proceeding. Sufficient evidence is yet to come before the court. The court is not in a position to settle the right between the parties. The court is acted upon materials placed by the both the parties before court. All these points can be well adjudicated after going through merits of the case. Now at this interim level, the court only relying on the submission made by the parties and documents filed by them. No hardship will be caused to the defendants if temporary injunction is granted in favour of plaintiffs. Hence, I answered of issues no.1

in the affirmative and issue no. 2 and 3 in favour of plaintiffs. In answer to issue no.4, I pass following order.

ORDER

1. Application is allowed.
2. Defendants, their agents and anybody claiming through them are restrained from transferring and creating any third party interest in the suit property-A and Suit property-B till final disposal of suit.
3. Cost in cause.

Date: 16.03.2024

Sd/-
(Y.D. Koinkar)
Civil Judge, J.D., Risod

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment/Order are same word to word, as per the original Judgment/Order.

Name of the Stenographer : Harshali A. Uchade
Name of court : C.J.J.D.& JMFC;Risod
Date : 16.03.2024
Judgment/Order signed by the
Presiding Officer : 16.03.2024
Judgment/Order uploaded on : 16.03.2024