

ORDER BELOW EXH.07

(Passed on this 13th day of June, 2022)

01] This is an application by the plaintiff U/s. 39 Rule 1 and 2 C.P.C. r/w. Section 151 of the Code.

The case of plaintiff in brief is as under:-

02] This is suit for perpetual injunction restraining the defendant from obstructing into the joint possession of the plaintiff in suit property along with application for temporary injunction against the defendant that they should not alienate the suit property or create third party interest till disposal of the suit.

03] The plaintiff is real brother of defendant No. 01 and 02, it appears that defendant No. 03 Kusumbai is the wife of defendant No. 01, it appears that defendant No. 02 Shamrao was died prior to filing of this suit. Therefore the suit is filed against the legal representative of said Shamrao.

04] It appears from the pleading that except plaintiff, defendant No. 01 and 02 they have other brothers namely Vasantrao Marotrao Suroshe, Prakash Marotrao Suroshe, Arun Marotrao Suroshe, Dilip Marotrao Suroshe. Thus they are in all six brothers interse. They are having ancestral property i.e. property in Sr.No. 57/3 admeasuring 3 H. 20 R, property in

Sr.No. 57/1 admeasuring 1 H. 58 R. both above property situated in Kawadipur Tq.Pusad. Property in Sr.No. 31/3A admeasuring 2 H. 33 R., property in Sr.No.31/4 admeasuring 40 R., property in Sr.No. 31/3 admeasuring 1 H. 62 R. all above property situated in Pusad-2. It is contended that it was decided between the brothers interse that the all above property shall be sold out and they would purchase the new properties in the name of each brothers as per their respective shares.

05] It is contended that all brothers interse have entered into an agreement and have authorized defendant No. 01 Dattrao and deceased defendant No. 02 Shamrao that they shall sell out the entire land of joint family and shall purchase the land in the name of brothers as per their share. It is contended that the agreement was executed between the parties on 17.11.2008, it was decided that in case of dispute, the panchas Shriramji Rodbaji Shinde and Atmaram Kisan Kadam would take the decision and which would be binding on all the parties.

06] It is contended that accordingly the property was sold out and the suit property was purchased in the name of plaintiff and his brothers as per their respective shares in the properties. It is contended that total suit property to the extent of 45 acres and 16 Gunthas was purchased and it was decided that each brothers shall get share to the extent of 7 acres and

their mother would get 3 acres of land. Defendant no. 01 and 02 has received more land than the plaintiff, to the extent of one and half acres they have also agreed they would transfer the land to the plaintiff but they flatly refused for the same. Therefore, this is suit by the plaintiff for perpetual injunction along with this application for temporary injunction.

07] The defendant have filed written statement at Exh. 20 and have filed pursis at Exh. No. 21 contending that the written statement be treated as say to the application for temporary injunction. It is contended that the suit is not tenable the parties have already received their share as per the sale deed and as per the lands purchased in their name. Hence it is prayed that the application for temporary injunction be rejected.

08] Having regard to the rival contention following points arises for my consideration and determination. I record my findings thereon for the reason given below.

Sr. No.	Points	Findings
1	Whether the plaintiff has prime facie case in his favour ?	In the Negative
2	Whether the plaintiff would suffer irreparable loss if injunction is refused ?	In the Negative

3	Whether the balance of convenience lie in favour of the plaintiff ?	In the Negative
4	What order	Application is rejected

As to Point No. 01 to 03

09] The plaintiff has filed copy of 7/12 extract of land Sr.No. 63, situated at Village Shelu, Tq. Pusad, Dist. Yavatmal, copy of 7/12 extract of land Sr.No. 57, situated at Village Shelu, Tq. Pusad, Dist. Yavatmal, copy of 7/12 extract of land Sr.No. 64, situated at Village Shelu, Tq. Pusad, Dist. Yavatmal, Copy of sale deed bearing no. 979/10 dated 19.03.2010, copy of sale deed bearing no. 976/10 dated 19.03.2010, copy of sale deed bearing no. 975/10 dated 19.03.2010, copy of sale deed bearing no. 982/10, dated 19.03.2010, copy of sale deed bearing no. 981/10, dated 19.03.2010, copy of sale deed bearing no. 983/10, dated 19.03.2010, copy of sale deed bearing no. 274/10, dated 19.03.2010, copy of sale deed bearing no. 978/10, dated 19.03.2010, copy of sale deed bearing no. 971/10, dated 19.03.2010, copy of sale deed bearing no. 973/10, dated 19.03.2010, copy of sale deed bearing no. 972/10, dated 19.03.2010, copy of sale deed bearing no. 980/10, dated 19.03.2010, copy of sale deed bearing no. 977/10, dated 19.03.2010, copy of agreement dated 17.11.2008

10] The plaintiff has filed Pursis at Exh. No. 23 contending that the contents in Exh. 7 i.e. the application for temporary injunction itself be considered as the argument of plaintiff on the application. It appears that the plaintiff has filed the copy of agreement dated 17.11.2008 wherein it is mentioned that the agreement was entered into amongst in all seven brothers i.e. 1] Dattarao Marotrao Suroshe, 2] Shamrao Marotrao Suroshe, 3] Vasanta Marotrao Suroshe, 4] Prakash Marotrao Suroshe, 5] Ramesh Marotrao Suroshe, 6] Arun Marotrao Suroshe, 7] Dilip Marotrao Suroshe. It is surprising to note that plaintiff has specifically contended in the application that there are in all six brothers however it appears from agreement that there are in all seven brothers including plaintiff and defendant no. 01 and 02.

11] It is specifically contended that in para no. 6 of the application that in all 45 acres 16 Gunthas i.e. land admeasuring 18 H. 5 R. was purchased for plaintiff and his others brothers. It is contended in para No. 07 of the application that the plaintiff and his other brothers have received the share in the property as per the property purchased in their name. It is specifically contended that the property was purchased in the name of each brothers as per their respective share and as decided amongst them in agreement dated 17.11.2008.

12] It is pertinent to note that if the plaintiff himself has contended that the property was purchased in the name of each brother as per their respective share then how the plaintiff can claim that the plaintiff has received less share and therefore defendant no. 01 and 02 shall transfer one and half acres more land to the plaintiff. While the sale deeds were themselves as per the respective share of each brothers then how one can say that one of them has received more or less share, there is no documentary proof in that regard that some of them have received less or more share. Therefore the contention of the plaintiff that defendant No. 01 and 02 are bound to transfer one and half acres land to him itself is inadmissible.

13] It is surprising to note that the plaintiff has contended in para no. 08 of the application that out of total 45 acres and 16 Gunthas of land each brothers was to receive 7 acres of land and mother would received 3 acres. However the total land is 45 acres and 16 Gunthas and if it is divided in 7 brothers then obviously each would get 6 acres of land proximately and not 7 acres as contended in para No. 8 of the application. Therefore the contention of the plaintiff that he has received less land to the extent of one and half acres is itself wrong.

14] More so it is contended by the plaintiff that there

was partition between the brothers as per the sale deed itself. Per contra, it is contended that the sale deeds were not in equal proportion. The plaintiff can not make two contradictory statement.

15] More so once the partition is asserted then obviously presumption always lies in favour of total partition and not partial partition. Hence in my opinion the plaintiff has no prima-facie case, plaintiff would not suffer any irreparable loss thus the balance of convenience also does not lie in favour of plaintiff hence I record my finding as to Point No. 01 to 03 in Negative and I pass following order as to Point No. 04-

ORDER

- 1] The application is rejected
- 2] Cost in cause.

Date : 13/06/2022

(N.G.Vyas)
Jt. C.J.J.D and J.M.F.C, Pusad.