

ORDER
(Below Ex.5)

Perused application and reply of defendant no.1 to 6. Following points arise for my determination and I record my findings against them for the reasons to follow:-

<u>POINTS</u>	<u>FINDINGS</u>
(i) Whether plaintiff has prima facie case?	<u>No.</u>
(ii) Whether balance of convenience lie in favour of plaintiff?	<u>No.</u>
(iii) Whether plaintiff will suffer irreparable loss, if injunction is not granted?	<u>No.</u>
(iv) What order?	<u>Application is rejected.</u>

REASONS

As to point no.1:-

2) The case of plaintiff is that herself and defendant no.3 & 7 to 12 are the children of Rupa Hona Rathod, who died on 05/10/1994. Field S.No.240, 241/1, 241/2 and 241/3 situated at mouza Singad, Tq. Digras is ancestral property of plaintiff defendant no.3 to 12. (Those are referred hereinafter as 'suit fields'). After the death of father, defendant no.3 illegally got suit fields recorded in his name. Thereafter, defendant no.3 to 6 fraudulently executed deed of partition in respect of suit fields. Plaintiff is illegally deprived of her right in the suit properties. Therefore, plaintiff has filed present suit claiming partition of her 1/8th share in suit fields. Plaintiff has filed present application contending that part of suit fields are proposed for acquisition for Wardha-Nanded Railway Project. Therefore, she is

praying for injunction against defendant no.1 and 2 that no compensation be awarded to defendant no.3 to 6 till disposal of this suit.

3) Contention of defendant no.1 and 2 is that total land admeasuring 3 H 50 R out of field S.No.241/1, 241/2 and 241/3 of mouza Singad is under acquisition. The documents shows that defendant no.3 to 6 own and possess the acquired property. The Government machinery is undertaking work of acquisition under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. (Hereinafter referred as new Land Acquisition Act). Therefore, these authorities have prayed for rejection of application.

4) Defendant no.3 to 6 have strongly opposed the application contending that the suit for partition suffers from non joinder of all parties and all properties. In fact field S.No.240, 241/1, 241/2 and 241/3 were the self acquired properties of deceased Rupa Hona Rathod. The only ancestral property of parties is field S.No.32/2 of mouza Amkinhi, which has not been joined to the suit. Deceased Rupa Hona purchased 32 acres 12 guntha land bearing S.No.117 vide sale deed dated 03/01/1964. Deceased Rupa Hona Rathod executed registered deed of partition in respect of that land on 18/12/1969. In that partition 22 acres 12 gunthas land was given to the share of defendant no.3 and the remaining 10 acres was kept by Rupa Hona himself. That old S.No.117 was given as Gat No.240 and 241. Later on 10 acres land out of old S.No.117 was purchased by defendant no.3 vide registered sale deed dated 06/01/1986. Thus, defendant no.3 became the exclusive owner of field S.No.240

and 241. Later on this defendant no.3 partitioned his property in between defendant no.3 to 6. In that partition the field Survey Number are given as 240, 241/1, 241/2 and 241/3. Plaintiff has no right and interest in these agricultural lands. Therefore, these defendants have prayed for rejection of application.

5) Plaintiff has filed following documents :

- i) Objection filed by her before L.A.O.
- ii) Death certificates of her parents.
- iii) Copy of mutation entry no.471, 13, 971, 911, 967.
- iv) 7/12 extracts of suit fields.
- v) Sale deed dated 06/01/1986.

6) On the other hand, defendant no.3 to 6 have filed following documents:

- i) Certified copy of sale deed dated 03/01/1964.
- ii) Certified copy of deed of partition dated 18/12/1969.
- iii) Record of rights in respect of Old S.No.117 of mouza Singad.
- iv) 7/12 extract of Old S.No.117.
- v) Sale deed dated 06/01/1986.
- vi) Partition deed dated 12/10/2006.
- vii) 7/12 extracts of suit fields.
- viii) Copy of mutation entries no.911 to 914.

7) Heard Shri Khandare learned counsel for plaintiff, Shri Dudhe learned counsel for defendant no.3 to 6 and A.G.P. Shri Rathod for defendant no.1 & 2.

- 8) Perused record and documents filed by both the parties.
- 9) The admitted fact on record is that plaintiff and defendant no.3, 7 to 12 are the children of deceased Rupa Hona Rathod. Basically the suit is for partition. The genealogical tree shows that the name of second wife of deceased Rupa Hona Rathod is left blank. The prayer clause of plaint is that plaintiff has 1/8th share in the suit fields, whereas the title clause of plaint shows that plaintiff is claiming 1/11th share in the suit fields. Though defendants have come with a case of non joinder of parties and properties, these defendants have not given any details/documents on record in that regard.
- 10) Plaintiff is claiming that suit fields are the ancestral properties. Whereas at this preliminary stage the documents filed by defendant no.3 to 6 shows that deceased Rupa Hona Rathod purchased Old S.No.117 in the year 1964, then he partitioned it in the year 1969 and that defendant no.3 purchased the remaining part of old survey number vide sale deed of 1986. Thus, the documentary evidence is prima facie supporting the stand of defendants. Whether plaintiff is having any interest and whether she is entitled for any share in the suit fields will be decided at trial.
- 11) Plaintiff is not seeking temporary injunction against alienation of suit fields during pendency of suit. Plaintiff is interested in the fact that no compensation be paid to defendant no.3 to 6 during pendency of suit. Therefore, the material question is whether plaintiff has prima facie case to restrain defendant no.1 and 2 from disbursing amount of compensation.

12) It is admitted on record that part of suit fields is under acquisition for railway project. Apparently plaintiff is claiming herself as an interested person in the amount of compensation to be paid by defendant no.1 and 2 in respect of part of suit property. Here sections 63 and 64 of the new Land Acquisition Act needs to be looked into,

Section 63. Jurisdiction of Civil Courts barred –

No Civil Court (other than High Court under Article 226 or Article 227 of the Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector of the Authority is empowered by or under this Act, and no jurisdiction shall be granted by any Court in respect of any such matter.

Section 64. Reference to Authority

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested.

13) Thus the plaintiff, being an interested person having objection as to whom the amount of compensation is payable, has remedy to file written application to the Collector as per section 64 of the Act. As the new Act has empowered the Collector to decide such an objection, the jurisdiction of Civil Court to grant injunction is barred by section 63 of the new Act. Therefore, it cannot be said that plaintiff is having prima facie to claim injunction against defendant no.1 and 2 from disbursing compensation. I, therefore, answer point no.1 in the negative.

As to point no.2 and 3:-

14) The documentary evidence available on record do show possession of defendant no.3 to 6 on the land subject matter of acquisition since long. Therefore, the balance of convenience tilts in favour of defendant no.3 to 6. If the application is allowed defendant no.3 to 6 would definitely suffer hardship. On the other hand, if the application is rejected and amount is disbursed to defendant no.3 to 6 and if plaintiff is found to have some share in that amount, she will definitely have remedy to recovery it from defendant no.3 to 6. Therefore, it cannot be said that plaintiff will suffer an irreparable loss if application is rejected. I, therefore, answer point no. 2 and 3 in negative.

15) In view of foregoing discussion, the basic ingredients which are sine qua non for grant of an injunction are not in favour of plaintiff. The application is therefore, liable to be rejected. Hence, I proceed to pass the following order in answer to point no.4.

Order

(i) Application is rejected.

(ii) Cost in cause.

(Order is dictated and pronounced in the open Court.)

Darwha.
Dt.15/03/2018.

(Tushar T. Aglawe)
Civil Judge (Sr.Dn.), Darwha.