

R.C.S.No.85/2014
 Padmawati and others
 vs. State and others

Order below exhibit-5

In all six plaintiffs filed suit for partition and separate possession and for declaration that order 12.1.2004 passed by Tahsildar Digras is illegal and void ab-initio. Gat no.12/1 (survey no.11/1) measuring 1.29 HR situated at Digras is the subject matter of the suit. The property is hereinafter referred to as "suit land". The plaintiffs claimed that they are heirs of deceased Sundarabai daughter of Trivenibai. The suit land owned by Trivenibai, who had two daughters – (i) Sundarabai, and (ii) Leelabai. Defendant nos.4 to 7 are son of Leelabai and Vasantrao. Vasantrao illegally grabbed the suit land. On getting knowledge in the year 2013, the plaintiffs filed objection on 20.2.2013 in proceeding bearing RM No.43/NAP-34/2012-2013 pending in the office of Additional Collector, Yavatmal, defendant no.2 for obtaining permission to convert the land for non-agriculture use.

2. Exhibit-5 is filed to restrain defendant no.2 from proceeding with the above pending file and defendant nos. 4 to 7 from changing status of the suit land, during pendency of the suit.

3. Defendant nos. 4 and 6 filed say exhibit-26 to application exhibit-5. They denied rights of the plaintiffs over the suit land. It is contended that the plaintiffs have not produced any record to show their right or share in respect of the suit land. On the contrary, the documents produced show that defendant nos.4 to 7 are exclusive owners of the suit land and they are in possession. This Court is barred from entertaining the suit in respect of the order passed by Tahsildar. The plaintiffs have no case and are not entitled for temporary injunction. On the contrary, if they succeed they would get benefit instead of suffering any loss if defendant no.2 proceeded further to grant permission in converting use of the suit land.

4. I have gone through written notes of arguments (exhibit-83) filed by the plaintiffs and also notes of arguments (exhibit-81) filed by defendant nos. 4 to 7. Having regards to the relevant rival pleadings and points of arguments, the points those arose for decision are as follows :

Points	Findings
1) Whether the plaintiffs have <i>prima facie</i> case ?	... No.

- 2) Whether the plaintiffs are having balance of convenience in their favour ? ... No.
- 3) Whether the plaintiffs would suffer an irreparable loss if the application is disallowed ? ... No.
- 4) What order ? Application rejected.

Reasons

As to point no.1 :

5. Record shows that Trivenibai had only two daughters - (i) Sundarabai, and (ii) Leelabai. Defendant nos.4 to 7, called as contesting defendants, denied that the plaintiffs are legal heirs of Trivenibai, in consequence their plea of being heirs of Sundrabai stands denied. But they failed to furnish details of status of the plaintiffs. So relations pleaded by the plaintiffs needs to be believed at this stage.

6. The plaintiffs are under obligation to prove that prima-facie they have right, title or any interest in the suit land. The plaintiffs filed 21 documents with list exhibit-3. However, none of these documents reveal name of either of the plaintiffs showing their right or interest to any extent for any period over the suit land. The points raised in notes of arguments on behalf of the plaintiffs are that – firstly status-quo granted in their favour and it extended time and again. Secondly, due to application filed by the contesting defendants preliminary issue was filed about tenability of the suit. This Court decided that issue in favour of the plaintiffs. It went up to the Hon'ble High Court. The contesting defendants withdrew revision with liberty to file another application raising preliminary issue. It is tried to show that these two points are enough to hold that the plaintiffs have prima-facie case. It is apparently the mis-conception.

7. The contesting defendants as well as plaintiffs themselves filed documents on record. Of them decision of the learned Member of the Maharashtra Revenue Tribunal, Nagpur dated 30th October 1998 (document no.7 with list exhibit-17 filed by the defendants) is of much importance to trace prima-facie case of the parties. I have gone through the said decision. It clearly shows that a series of litigations relating to the suit land between father of contesting defendants and Rashtriya Vidyalaya Digras went up to Hon'ble High Court. In which order passed by the Tenancy Naib Tahsildar dated 30.11.1965 was subject matter. By the said

order father of contesting defendants namely Vasantrao has been held to be the tenant of the suit land. The said order achieved finality. There was another round of litigation started by the Education Society of the said School and it also went up to the Hon'ble High Court against the order under challenge in present suit. In the Hon'ble High Court there was compromise and on payment of Rs.3 lac paid by Vasantrao to the Education Society, Writ Petition No.1257 of 1999 disposed of by order dated 18 December 2009. In fact in the first round of litigation itself the Hon'ble High Court decided matter in favour of Vasantrao holding that , gift deed executed by Trivenibai in the year 1959 in favour of the school was incompetent firstly for want of possession and secondly the school being not the juristic person. Thus, the second round of litigation through Education Society was lacking bona-fides.

8. The decisions of Tahsildar, Sub Divisional Officer, Maharashtra Revenue Tribunal, in unequivocal terms held that from before 1965 Vasantrao means father of contesting defendants is **tenant** and he found to be in possession of the suit land. The plaintiffs never challenged any of above decisions at any point of time. They did not plead as to how they have right over the suit property and what about the rights of Vasantrao settled by above decisions. Further discussion on the point is unwarranted and suffice it to say that the plaintiffs have no prima-facie case but the findings goes in favour of the contesting defendants.

As to point no.2 :

9. It is true that in joint family property every coparcener is owner of the un-divided property to extent of his undefined share. But this principle does not apply here at this stage for want of prima-facie case in favour of the plaintiffs. As they failed to show their right over the suit land, exclusive rights vests in contesting defendants through their father from before 1965, certainly the balance of convenience does not lie in favour of the plaintiffs but it is in favour of the contesting defendants.

As to point no.3 :

10. I have carefully considered case pleaded by the plaintiffs in the light of the documents on record and points of arguments. I restrain myself from making detail scrutiny rather making observations based on the documents in the file, at this stage. As stated by the contesting defendants in their say, if the Additional Collector Yavatmal – defendant no.2, proceeded with the proceeding pending before him for conversion of use of the suit land, it will not cause any loss to the plaintiffs, if at all they succeed in the suit. In other words the loss can be compensated in terms of money. Accordingly third point is answered in negative.

As to point no.4 :

11. In view of discussion and conclusions drawn while answering first, second and third points and findings recorded thereto, the plaintiffs are unsuccessful to have the order temporary injunction. In consequence :

Application exhibit-5 stands rejected.
The costs would be in cause.

Place : Darwaha.
Date : 28/08/2018.

(S.P.Kekan)
Jt.Civil Judge Sr.Dn.