

Shanta Vs. Gulab & Anrs.



Order Below Exh.05
(Dated : 23/10/2024)

01] Present application filed by applicant under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 for temporary injunction, 1908. According to applicant, non-applicant No.1 is her brother, whereas non-applicant No.2 is the wife of non-applicant No.1, Non-applicant No.3 Kausalyabai is the sister of applicant, whereas non-applicant Nos.4 and 5 are the children of non-applicant No.1 and 2. According to applicant, the land Gat No.30/2, admeasuring 2H 02 R, situated at Datta Rampur, Tq. Arni, District Yavatmal is the ancestral property of applicant and non-applicant Nos.1 to 5. (Henceforth, the above property would be referred as 'suit property' for the purpose of convenience). According to applicant, she is having 1/3rd share in the suit property. According to applicant, after the death of her father the suit property was recorded in the name of non-applicant No.1 excluding other legal heirs. According to applicant, subsequently non-applicant No.1 has partitioned the suit property amongst non-applicant No.1 and 2. According to applicant, subsequently, on 13/12/2023 the non-applicant No.1 and 2 have alienated the suit property in favour of non-applicant No.6 by way of two registered sale deeds. According to applicant, as the both the sale-deeds having been executed by excluding the legal heirs, therefore, both these sale-deeds are null and void and they are not binding on the rights of the applicant.

02] According to applicant, non-applicant No.1 and 2 have executed sale-deed of the suit property in favour of non-applicant No.6 without obtaining her signature. According to applicant, non-applicant No.6 is converting the suit property into non-aggricultural property and if it is further alinated then rights of third party would be created and it may lead to complixcity of the matter. According to applicant, the necessary ingrigents for temporary injuncion application, i.e. prima-facie case, balance of convinence and irreperapable loss are in favour of applicant. Therefore, applicant prayed for allowing the application and restraining non-applicant No.6 from creating any third party interest in the suit property during the pendency of suit.

03] The say of non-applicants was called for. The non-applicant Nos. 1 to 4 have filed their written statement vide Exh.9. In response to the notice, the non-applicant No.5 failed to appear before the court on given date therefore, matter is proceeded exparty against non-applicant No.5. The non-applicant No.6 have filed his written statement vide Exh.28 on record.

04] Non-applicant Nos. 1 to 4 and non-applicant No.6 contended that the entire contents in the application under reply are totally false and therefore, they prayed for summarrily rejection of it. The non-applicant Nos. 1 to 4 denied that the applicant is having her 1/3rd undivided share in the suit property. The non-applicant Nos. 1 to 4 denied that the entire contentions in respect of deceased Somlibai is false. According to non-applicants, the Non-applicant No.1 and 2 have executed two registered sale-deeds of the suit property in favour of non-applicant No.6. According to non-applicant Nos. 1 to 4, the applicant

also consented for those sale-deeds at the time of execution of sale-deed. The Non-applicant No.6 submitted that the applicant is not related with the suit property. According to non-applicant No.6, in fact the applicant and her mother have relinquished their share in the suit property. According to non-applicant No.6, subsequently, suit property was recorded in the name of non-applicant No.1 and he has partitioned the suit property with non-applicant No.2. According non-applicant No.6, property was subsequently recorded with non-applicant No.1 and 2. According to non-applicant No.6, the non-applicant No.1 and 2 have executed registered sale-deed of the suit property in favour of non-applicant No.6 on 13/12/2023. According to non-applicant No.6, even out of precautions, they have obtained consent of applicant at the time of execution of two sale-deeds. According non-applicant No.6, the non-applicant No.6 is the bonafide purchaser of the suit property for value of consideration. According non-applicant No.6, necessary ingredients for temporary injunction application i.e. prima-facie case, balance of convenience, irreparable loss are not in favour of applicant. According non-applicant No.6, applicant has suppressed many material facts from the court and have not come before the court with clean hands. Therefore, non-applicant No.6 prayed for rejection of application with costs.

05] Heard learned advocate for both side.

06] After considering the material placed on record, following points arise for my determination against which I have recorded my findings thereon for the reasons stated below :-

SR.NO.	POINTS	FINDINGS
01.	Does applicant proves that, prima facie case lies in her favour ?	In the Negative.
02.	Does applicant further proves that, balance of convenience lies in her favour ?	In the Negative.
03.	Does applicant proves that, if the application is refused, then irreparable loss would be caused to her ?	In the Negative.
04.	What order ?	Application Exh. 5 is rejected.

:: REASONS ::

As To Point Nos. 1 to 3 :-

07] Perused record and documents filed on record in the light of argument advanced. On perusal of record, it is noticed that it is specifically contention of the applicant that the fraud has been committed upon her. The applicant also contended that after the death of her father, her name was not recorded as legal heirs in the record of the suit property. The applicant also contended that the non-applicant No.1 and 2 have executed the registered sale-deed of the suit property by excluding her and without obtaining her signature as legal her. In this background on perusal record it is noticed that the applicant herself have filed certain document below list Exh.3. The applicant has filed the certified copy of mutation entry No.105, dated 30/09/1996. The contents of the said mutation entry reveals that after death of deceased Lalu Ramu Jadhav, name of applicant, non-applicant No.1 and Somlibai has been recorded as legal heirs of deceased Lalu. Thereafter,

on going through record, it is noticed that the applicant has filed on record the certified copy mutation entry No.155, dated 24/04/2000. The contents of the said mutation entry No.155 reveals that the applicant Shantabai and deceased Somlibai have relinquished their share in the suit property and based upon the said relinquishment deed the mutation entry No.155, dated 24/04/2000 was passed. The learned Advocate for Non-applicant No.6 have also filed on record the said relinquishment deed below list Exh.34. The contents of the said relinquishment deed, dated 31/03/2000 reveals that the applicant and deceased Somlibai have relinquished their share in the suit property voluntarily on 31/03/2000 before the witnesses. It is appearing that based upon this relinquishment deed, dated 31/03/2000 the competent revenue office have sanctioned mutation entry No.155. On going through record it is noticed that these mutations and relinquishment deed are more than 20 years old. The applicant has not filed on record any material suggesting that being dissatisfied with those mutation entries and relinquished deed she has preferred appeal before the competent officer. In absence of any such material on record it appears that the said relinquishment deed as well as those mutation entries are acted upon and attained finality.

08] The applicant also contended that those sale-deeds does not bears her signature. In this background, on going through record it is noticed that the applicant has filed the copy of sale-deed bearing No.2580/2023 below list Exh.3. The applicant has filed the copy of sale-deed bearing No.2581/23 below list Exh.31. On going through both the sale-deeds it reveals that the applicant has consented both the sale-deeds and signed on it. The applicant in both the sale-deeds mentioned

that the applicant and her mother deceased Somlibai have relinquished their share in favour of non-applicant No.1 Gulab on 31/03/2000. Now here, applicant is saying that she has not relinquished her share in the suit property. The applicant also contended that her signature was not obtained on both the sale-deeds executed by non-applicant No.1 and 2 in favour of non-applicant No.6. From this it is appearing that the applicant has suppressed material facts from the court and not came before the court with clean hands. In such circumstances, one cannot rely upon the applicant. In such circumstances, in my opinion, prima-facie case is not in favour of applicant. From the record it is appearing that non-applicant No.1 and 2 have executed registered sale-deed of the suit property in favour of non-applicant no.6. The competent revenue officer has already by relying upon those sale-deeds mutated suit property in the name of non-applicant No.6. In such circumstances, in my opinion, the balance of convenience is also not in favour of applicant. In such circumstances, if application is refused, then irreparable loss would not be caused to the applicant. Accordingly, I have answered Point No.1 to 3 in the negative.

09] The learned Advocate for plaintiff relied upon the case laws of Hon'ble Bombay High Court in ***Shobharam Bhagat.Vs. Parbatabai and Ano., 2009 (6) All MR 307***, wherein Hon'ble Bombay High Court has held that registration of document, it is only if there is a transfer or relinquishment of right, title or interest in the property that it would require registration. In this background, on going through record, it is noticed that the alleged relinquishment deed is not registered one. However, on going through record, it is noticed that the alleged relinquishment deed is of the year 2000 and it is acted upon. On going

through record, it is noticed that based upon this relinquishment deed the mutation has taken place and the suit property was recorded in the name of non-applicant No.1. The effect of non-registration of the relinquishment deed can be seen at the time of trial. Considering all, I respectfully submits that I does not rely upon the ratio laid down by the Hon'ble Bombay High Court in the above cited case law. Further, Ld. Advocate for non-applicant No.6 relied upon the case laws *Padhiyar Chenaji.Vs. Maniben Jagmalbhai, Civil Appeal No.1382 of 2022, dated 03/03/2022*, wherein Hon'ble Supreme Court held that it is to be noted that the main reliefs sought by the plaintiff in the suit were cancellation of sale-deed and declaration and the prayer of permanent injunction restraining defendant No.1 from disturbing her possession can be said to be a consequential relief. Hon'ble Supreme Court further held that the title to the property was the basis of the relief of possession. If that be so, in present case, a relief for permanent injunction can be said to be a consequential relief and not a substantive relief as observed and held by the High Court. The Hon'ble Supreme Court further held that therefore, once the plaintiff has failed to get any substantive relief of cancellation of sale-deed and failed to get any declaratory relief, and as observed hereinabove, relief of injunction can be said to be a consequential relief. Therefore, the prayer of permanent injunction must failed. The Hon'ble Supreme Court further held that injunction may be granted even against the true owner of the property, only when the person seeking the relief is in lawful possession and enjoyment of the property and also, legally entitled to be in possession, not to dispossess him, except in due process of law. In this background on going through record, it is noticed that the applicant has not brought any material on record showing that she is in lawful possession and

enjoyment of the suit property and legally entitled to be in possession, not to dispossess her, except in due process of law. From the record it revealing that the applicant has relinquished her share in the suit property and the name of non-applicant No.1 was recorded to the record of suit property at about 24 years back. Further, the applicant has not come before the court with clean hands and suppressed material facts from the court. The facts of the reported case laws and case at hand are identical with each other. The ratio laid down by Hon'ble Supreme Court perfectly applies to the case at hand. Therefore, I rely upon it.

As To Point No.4 :-

10] In view of findings given to the point No.1 to 3 in the negative, the application is liable to be rejected. Hence, in answer to point No.4, I proceed to pass the following order.

:: ORDER ::

01. Application vide Exh.05 is rejected.
02. Costs in cause.

Date : 23/10/2024.

(S. S. Aradwad)
Civil Judge Senior Division,
Darwha.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/order are same word for word as per original Judgment/order.

Name of Stenographer	R.H. Lokhande (Grade-II)
Court Name	Shri. S. S. Aradwad, Civil Judge Sr.Dn., Darwha, Dist. Yavatmal.
Date of Judgment/order	23-10-2024
Judgment/order signed by Presiding Officer on	25-10-2024
Judgment/order uploaded on	25-10-2024