

MHAH110008412022



Mirabai Dada Rahane

Versus

Vaishali Rahane +1

ORDER BELOW EXH.5 IN R.C.S. 266/2022
(Passed on 26 September 2024)

Perused the application and Say. Heard.

Application can be summarized as under :-

2. This is an application filed by the plaintiffs/applicants seeking interim relief in the suit filed for declaration.

3. As per the contention of applicant, the non-applicant no. 1 is the daughter of applicant and non-applicant no. 2 is a co-operative society. On 12.03.1998 the father of non-applicant no. 1 i.e. husband of applicant has given the suit property out of gat no. 175 mentioned in para no. 1 of the plaint to non-applicant no. 1. At the time of partitioning the property, the suit property was given to the non-applicant no. 1. But as the non-applicant no. 1 was minor at that time, the name of applicant was recorded as a legal guardian of non-applicant no.1. Since the year 1998 the applicant is in cultivating possession of the suit property. As per the contention of applicant, in the year 1998 the non-applicant no. 1 was about 8 to 9 years old and the applicant has taken care of non-applicant no.1 since her childhood. It is the applicant who has cultivated the suit property since 1998 and now the non-applicant no. 1 has made changes in the 7/12 extract and the name of applicant as the

guardian of non-applicant no. 1 was removed. Thereafter, the non-applicant no. 1 has mortgaged the property with non-applicant no. 2 and obtained certain loan amount. It is contended that, the non-applicant no. 1 has denied the ownership of applicant over the suit property. As per the submissions of the applicant, the applicant has become owner of the suit property by way of adverse possession and now the non-applicant is trying to alienate the suit property. Hence, applicant has filed the present suit praying that, it be declared that, she is the owner of the suit property by way of adverse possession and non-applicant no. 1 and 2 be restrained from alienating the suit property or creating any third party interest in the suit property.

4. Non-applicant No. 1 has appeared in the matter and filed her say vide **exhibit 22** and strongly objected the same. As per the contention of non-applicant no. 1, after becoming major she became the absolute owner of the suit property and applicant has no concern with the suit property. The applicant's name was recorded in 7/12 extract only as a legal guardian of non-applicant no.1, but she has no right in the suit property. It is further submitted that, for her legal necessity the non-applicant no. 1 has mortgaged the property with non-applicant no. 2 and she has every right to deal with the suit property as the non-applicant no. 1 has become the legal and absolute owner of the suit property. Hence, prayed for rejection of the said application.

5. Non-applicant no. 2 though served, has not appeared before the court and has not filed reply to the said application. Hence, the application is ordered to be proceeded without say of non-applicant no. 2.

6. Considering the rival contentions of the parties following points arose for my consideration to which I have recorded my findings as follows for the reason mentioned below:-

No.	Points	Findings
[1]	Whether plaintiff/applicant proves that, she has prima facie case in her favour ?	In the Negative.
[2]	Whether balance of convenience lies in favour of plaintiff/applicant ?	In the Negative.
[3]	Whether plaintiff/applicant will suffer irreparable loss if prayer for temporary injunction is disallowed ?	In the Negative.

REASONS

7. Heard Learned Advocates for the parties at length.

8. From the submissions of parties and the documents produced on record it appears that, it is not disputed that the suit property is in the name of non-applicant no.1. The 7/12 extract filed on record clearly shows that, earlier the name of applicant was recorded as the legal guardian of non-applicant no.1 but now the

name of non-applicant no.1 is separately mentioned as a owner of the suit property. The *fejar* bearing no. 750 produced on record by applicant herself clearly shows that, the partition took place in the year 1998 and the suit property was given in the share of defendant no. 1 and the name of plaintiff was recorded as legal guardian of non-applicant no.1. The *bonafide* certificate of non-applicant no.1 is also produced on record from which it appears that, in the year 1998 she was around 8 years old. Considering the same it is clear that, after attaining majority the non-applicant no.1 became the absolute legal owner of the suit property. The applicant whose name was recorded as a legal guardian of non-applicant no.1 in 7/12 extract of suit property cannot claim any right over the suit property. The applicant cannot claim that, she became the absolute owner of the suit property by way of adverse possession.

9. While granting the discretionary relief of injunction the court has to see the prima facie case, balance of convenience and irreparable loss. The prima facie case implies the probability of plaintiff obtaining a relief on the material placed before the court. In the present matter, applicant has failed to show her ownership or possession over the suit property. Furthermore, the plea of adverse possession is not tenable as the applicant was in possession of the suit property as the legal guardian of minor daughter. As such, the applicant clearly failed to show prima facie case in her favour and balance of convenience also do not lie in her favour.

10. From the careful perusal of the documents produced on record and from the existing circumstances at this stage it clearly appears that, the applicant has failed to prove that, she has a prima facie case in her favour. Having considered above aspect, I am of the view that plaintiff/applicant has failed to show prima facie case, so also, balance of convenience does not lie in her favour. Consequently disallowing application of temporary injunction will not cause any irreparable loss to plaintiff/applicant. Hence, I hereby record my findings to the points accordingly and proceed to pass following order.

ORDER

1. Application stands rejected.
2. Cost in cause.

(Dictated and pronounced in open court.)

Date : 26.09.2024.

(Swaroopkumar S. Bose)
Civil Judge Senior Division
Kopargaon Dist. Ahmednagar.