

MHCC040004552008



IN THE CITY CIVIL COURT FOR GR.MUMBAI AT DINDOSHI
BORIVALI DIVISION, MUMBAI
ORDER ON PRELIMINARY ISSUE
IN
S. C. SUIT NO.2051/2008

Smt. Hirubai Vithoba Bhandari (Since deceased)

1. Shri. Manohar Vithoba Bhandari & Ors.

... Plaintiffs.

Vs.

Shri Vinayak Nana Patil & Ors.

... Defendants.

Adv. N. D. Thakur, for Plaintiffs.

Adv. A. S. Tungare, for Defendant Nos.1 & 2.

CORAM : HIS HONOUR JUDGE,
SHRI. TUSHAR T. AGLAWE
(C.R. No.16)

Date : 23rd January, 2025

ORDER

On 02.01.2025 a preliminary issue was framed as per Order 14, Rule 2 (2) of CPC as “Whether suit is maintainable as framed”.

2. Heard learned advocate for plaintiffs and learned advocate for defendant nos.1 and 2 on the above preliminary issue. Learned advocate for plaintiff has tendered written notes of argument below Exh.29.

3. Perused the plaint.

4. The case of plaintiff is that, she is member of Hindu Undivided Family and successor of original owner Balkrushna Padman Bhandari. Pandurang, Moreshwar and Ramabai were the siblings of original plaintiff. Deceased Balkrushna Padman Bhandari was the absolute owner of four agricultural lands. Said Balkrushna Bhandari died intestate. Therefore, plaintiff and defendants succeeded those four properties. However, defendant nos.3 and 4, behind the back of plaintiff, mutated their names in the revenue records. Plaintiff has already challenged the mutation entry in the name of defendant nos.3 and 4. Later on, defendant nos.3 and 4 sold the suit property (one of the four properties left by deceased father) in favour of defendant nos.1 and 2. Plaintiff and defendant no.5 were kept in dark of this transaction. Being successor of Balkrushna Bhandari, plaintiff is entitled for 1/6th share in the property of deceased Balkrushna Bhandari. Therefore, the document in respect of the suit property executed by defendant nos.3 and 4 in favour of defendant nos.1 and 2 is not binding on plaintiff. Even, that transaction was not for legal necessity of the joined family. On 24.09.2008, plaintiff came to know that, defendant nos.1 and 2 have started development activity on the suit property i.e. Survey No.27, Hissa No.1 of Village Charkop. Therefore, plaintiff has instituted present suit for permanent injunction restraining defendant nos.1 and 2 from entering upon the suit property and from carrying out development activity thereon.

5. By pleading in the plaint, plaintiff herself has admitted that, there is a conveyance of suit property in favour of defendant nos.1 and 2. It is further admitted that, defendant nos.1 and 2 have started

development activity/construction on the suit property. Thereby, it is made clear on record that, as on the date of suit defendant nos.1 and 2 were in possession of the suit property.

6. Plaintiff claims that, she has 1/6th share in the four properties left behind by her father. Plaintiff has not claimed for declaration of her share or for partition of her share. Rather, plaintiff has not joined other three properties in the suit. In Para-9 of the plaint, it is case of plaintiff that, she has 1/6th share in the suit property and defendant nos.3 and 4 have sold it without paying consideration to plaintiff and defendant no.5.

7. In **Anathula Sudhakar Vs. P. Buchi Reddy [(2008) 4 SCC 594]**, the Hon'ble Apex Court has laid down as under-

“11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

11.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the

defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.”

8. In the present case, as on the date of suit plaintiff was well aware about the conveyance of suit property executed in favour of defendant nos.1 and 2 and possession of defendant nos.1 and 2 on the suit property. However, plaintiff has not claimed for declaration against the conveyance of suit property in favour of defendant nos.1 and 2. Though, plaintiff has pleaded that, she is having 1/6th share in the suit property, plaintiff has not prayed for declaration of her 1/6th share and for partition of suit property. Plaintiff has also not prayed for possession of suit property. The suit is for simpliciter injunction. On meaningful reading of the plaint, the plaintiff has avoided to claim substantive relief. In view of above authority a suit for simpliciter injunction without claiming substantive relief is not maintainable. Therefore, the suit as framed by plaintiff is not maintainable. I, therefore answer preliminary issue in the negative and proceed to pass following order:

ORDER

- 1) The suit is not maintainable as framed.
- 2) The suit is dismissed.
- 3) Proceeding is closed.

23/01/2025

(Tushar T. Aglawe)
Judge, City Civil Court,
Borivali Division, Dindoshi,
Mumbai.

Dictated on : 23/01/2025
Transcribed on : 23/01/2025
Checked & Signed by HHJ on : 24/01/2025

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.” UPLOADED ON 24.01.2025 AT 05.45 PM Mrs. J. S. Gawai NAME OF STENOGRAPHER	
Name of the Judge (with Court Room No.)	HHJ Shri T.T. Aglawe, C.R. No.16.
Date of Pronouncement of Judgment/Order.	23/01/2025
Judgment/Order signed by PO. on	24/01/2025
Judgment/Order uploaded on	24/01/2025