



Presented on : 16. 01. 2020
Registered on : 18. 01. 2020
Decided on : 03. 02. 2020
Duration : Y. M. D.
00. 00. 18

IN THE COURT OF DISTRICT COURT, KOLHAPUR,
AD-HOC DISTRICT JUDGE – 4, KOLHAPUR
(Presided over by K. S. Kulkarni)

MISC.CIVIL APPEAL NO.19/2020
CNR NO. MHKO01002682020
EXH. NO.23/A

1. **Shri. Bhagwan Ramchandra Patil,**)
Age : 66 Yrs., Occu. Agriculturist,)
R/o. Jakhale, Tal. Panhala,)
Dist. Kolhapur.)
)
2. **Parvati Ramchandra Patil (Deceased)**)
Thr. heir.)
)
2/a. **Jyotiram Bhagwan Patil,**)
Age : 30 Yrs., Occu. Agriculturist,).... **APPELLANTS**
R/o. As above.) (Ori. defendants)

... **VERSUS** ...

1. **Shri. Krishnat Ganapati Patil,**)
Age : 38 Yrs. Occu. Agriculturist,)
R/o. Jakhale, Tal. Panhala,)...**RESPONDENT**
Dist. Kolhapur.) (Ori. plaintiff)

Appeal under Order 43 Rule 1
of the Code of Civil Procedure.

APPEARANCE:-

Shri. D. B. Shirke, Advocate for the appellants.

Shri. V. B. Mahajan, Advocate for the respondent.

J U D G M E N T

(Pronounced in open court on 03.02.2020)

Against the order passed in interlocutory application (below Exh. 5) in RCS No. 114/2019 this Misc. Appeal is preferred.

02. For the sake of convenience, parties are identified as per their original status in the suit.

03. Order of allowing of interlocutory application for prayer to grant temporary injunction, is challenged on the grounds of misconception of facts and law. Thus, this appeal.

04. Heard advocates of plaintiff and defendants. Following points arise for my determination, my findings thereon with the reasons discussed hereinafter.

SR.NO.**POINTS****FINDINGS**

- | | | |
|----|--|------------------|
| 1) | Whether prima-facie case coupled with balance of convenience lies in favour of the plaintiff/respondent? Whether plaintiff/respondent would suffer the irreparable loss in the event of refusal to grant the ...
injunction ? | <u>No</u> |
|----|--|------------------|

- 2) Whether the trial court order need interference ? ... Yes
- 3) What relief ? ... As per the final order.

Appellant/defendants case:

05. Defendants submitted that the suit properties are originally owned by Ramchandra which was lies in the exclusive possession of them. They further stated that in view of judgment passed in RCS No. 143/1982 the present plaintiff has tried to establish his right envisaged vide the Will dtd. 19/01/1983 executed by the Ramchandra. It is further stated that in view of the judgment and decree passed in RCS No. 143/1982 no right is accrued in favour of present plaintiff and accordingly, it is stated that he has not in possession of the suit properties. It is further stated that in view of judgment and decree passed in RCS No. 33/1986 which is also modified in RCA No. 398/2013, the right asserted by the present plaintiff by virtue of the Will dtd. 19/01/1983 is extinguished. Consequently, it is stated that the plaintiff is not in possession of the suit properties. It is further stated that the trial Court has misinterpreted the effects of judgment and decree passed in RCS No. 143/1982 as well as RCS No. 33/1986 and accordingly, allowed the application. Lastly, it is stated that, present defendants are in the possession of the suit properties as their names depicted upon the 7/12 extract and thus, prayed to allow this appeal.

Opponent/plaintiff case:

06. Plaintiff asserted his right in view of the Will dtd. 19/01/1983 executed by Ramchandra in his favour, as well as the judgment and decree passed in RCS No. 143/1982. Plaintiff submitted that he is not added as a party in RCS No. 33/1986 and further to RCA No. 398/2013 and consequent upon the judgment and decree passed accordingly are not binding upon him. Plaintiff further submitted that the present defendants are the parties to RCS No. 143/1982 and thus, the said judgment and decree unless set aside binding upon them.

07. It is further stated that in view of judgment and decree passed in RCS No. 143/1982 extent to 1/3 share in the suit properties are allotted to him. He thereby having Vahivat in the same area with the knowledge and consent of present defendants since long. He thereby submitted that he thereby cannot be oust from the suit properties and thus, support the order passed by the Ld. Trial Court below Exh. 5 and thus, requested to dismiss the appeal.

Documents submitted

08. At Sr. No. 1 and 2 along with Exh. 3 the copy of application Exh. 5 and order passed thereon is submitted. At Sr. No. 1 and 2 along with Exh. 22 the copies of consent letter given by defendants and application filed with Talathi are filed. I have

gone through the paper book.

REASONS

Point Nos. 1 to all

09. The points are interlinked and thereby discussed together. On perusal of the decree passed in RCS No. 143/1982 it is appeared that present plaintiff as well as defendants are the parties to the said suit. The said suit is originally filed by Ramchandra. After his death present plaintiff step into his shoes in view of the Will executed by Ramchandra dtd. 19/01/1983. The said suit ended in the compromise. In view of the compromise it is appeared that 1/3 share in the suit properties are allotted to the present plaintiff. It is apposite to reproduce the contents appeared in the compromise pursis of RCS No. 143/1982. They read as ;

१. मूळ वादी रामचंद्र तुकाराम पाटील यांचा दावा मिळकतीत १/३ हिस्सा होता हे उभय पक्षी मान्य आहे.
२. रामचंद्र तुकाराम पाटील यांनी आपले हयातीत तारीख १९/०१/१९८३ ला मृत्युपत्र करून देवून आपला तिसरा हिस्सा कृष्णात गणपती पाटील अ. पा. क. गणपती महादेव उर्फ ज्ञानदेव पाटील यांना दिला आहे व ते वादीचे पाल्य म्हणून दाखल आहेत. सदर मृत्युपत्र प्रतिवादी यांना कबूल असून कृष्णा गणपती पाटील (वारस वादी) यांना दावा मिळकतीत १/३ हिस्सा आला हे त्यांना कबूल आहे.
३. प्रतिवादी क्र. १ व २ यांना दावा मिळकतीत १/३ हिस्सा आहे.

४. वादी व प्रतिवादी क्र. १ व २ यांनी सर्व दावा मिळकतीत समार्डकपणे काम करुन येणारे उत्पन्न वाटून घ्यावयाचे आहे. प्रत्येक जमिनीचे स्वतंत्र वाटप करावयाची आवश्यकता नाही.
५. या दाव्याचा कोर्ट खर्च उभय पक्षकारांनी आपापला सोसणेचा आहे.
६. प्रतिवादी क्र. ३ ते ८ हे सह हिस्सेदार असल्याने या दाव्यात प्रतिवादी आहेत ते दाव्यात गैरहजर आहेत. इतर पक्षकारांची तडजोड झाल्याने त्यानुसार हुकूमनामा व्हावा.

10. After reading the said contents it is appeared that present plaintiff as well as defendants has allotted 1/3 share each in the suit property. After reading the pursis it is also appeared that it is decided between them that the suit properties are remain in common between them and no partition by metes and bounds be effected between them. Admittedly, this condition is against the public policy and thereby not tenable in the eyes of law.

11. It is true that after execution of compromise pursis suit bearing RCS No. 143/1982 stands decreed as per the terms and conditions. No final decree to that effect is drawn. Consequent upon, the separate possession is neither given to either plaintiff or defendants. They are become the tenants in common. No specific area comprises within the boundary mark is lies in possession of either plaintiff or defendants. Thereby though for the sake of argument it is assumed that they have Vahivat as per the convenience, it cannot be construed as they have inducted in that specific area of that particular suit property. To substantiate this fact I relied upon the authorities submitted by

appellant/defendant which reported as; *Smt. Shobhabai Manik Teltumbade Vs. Dadaji Jairamji Waghmare*, 2014(1) Mh. L. J. 542; *Shankar Balwant Lokhande Vs. Chandrakant Shankar Lokhande*, 1995 (3) SCC 413; *Annasaheb Rajaram Nagane Vs. Rajaram Maruti Nagane*, 2001 (3) Mh. L. J. 53; *Vishwasrao Shankarrao Meghe Vs. Ushabai Vishwasrao Meghe*, 1987 (1) Mah. L. R. 798; *Bimal Kumar VS. Shakuntala Debi*, 2012 (3) RLW (SC) 2168; *Bhagwansingh Vs. Babu Shiv Prasad*, AIR 1974 MP 712. They are become profitable to me to arrive at the conclusion.

12. It is true that except present plaintiff all the other person who are going to be affected by the decree passed in RCS No. 143/1982 were the parties for RCS No. 33/1986. Against the judgment and decree passed in RCS No. 33/1986 appeal lies bearing RCA No. 398/1993 before the Hon'ble District Court. Although in the said appeal the rights of all the heirs are crystallizes except the present plaintiff, therefore, the said judgment and decree is not binding upon him. To substantiate this fact I relied upon the authorities submitted by appellant and respondent/plaintiff. *Ramesh Verma Vs. Lajesh Saxena*, 2016 0 Supreme (SC) 944; *Rupesh Singh Vs. Pitamber Singh*, 2012 (2) Law Herald 1711; *Ragni Chopra Vs. Rajesh and Ors*, 2013 4 Cur CC 461; *Gram Panchayat of village Karna Vs. Mam Chand*, 2013 4 Law Herald 3253; *Kiran Singh Vs. Chaman Paswan*, 1954 0 AIR (SC) 340; *Madura Coats Pvt. Ltd. VS. M/s. Arkay Energy*, 2009 0 Supreme (Mad) 83855; *Sanjay Kaushish VS. D.*

C. Kaushish, 1991 0 Supreme (Del) 8506;

Temple of Thakurji Vs. State of Rajasthan, AIR 1998 Rajasthan 85; Smt. Meneka Gandhi Vs. Union of India, AIR 1978 Supreme Court 587. They are profitable to me to arrive at the conclusion.

13. It is also apposite to note here that against the judgment and decree passed in RCA No. 398/1993 second Appeal is pending before Hon'ble High Court. No final decree proceeding has been drawn in respect of judgment and decree passed in RCS No. 33/1986. Consequent upon though the shares are specified they are not carved out by metes and bounds.

14. This fact give end result that the plaintiff and defendants are the co-sharer. It is settled principle of law that the co-sharer has unity in possession and jointness in ownership. Each co-sharer has ownership in every small piece of land. Thus, the injunction against co-sharer is not tenable in the eyes of law. Because each co-sharer possessed the land for other and unless there is a infringement to the rights, injunction cannot be granted. In the matter in hand plaintiff is failed to state the area lies in his possession mentioning the boundary marks and thus, it is hard to believe that he is in possession and thereby he cannot be oust. Further by admitting the case of plaintiff that he is in possession of 1/3 area of the suit properties, without specifying the boundary mark and granting injunction in that event, amount to granting

blanket injunction. By taking advantage of such order plaintiff may tried to establish his possession within that specific area, demarcated by boundary mark. Consequently, I am on the opinion that plaintiff has no prima-facie case coupled with balance of convenience in his favour. The Ld. Trial Court is failed to observe that the parties are common in tenants. Plaintiff is not in possession of the specific area demarcated by the boundaries and thus, the injunction prayer that he should not be oust is not maintainable. Thus, there is error while marshaling the facts committed by Ld. Trial Court. Accordingly, there required the interference in the order of Ld. Trial Court. I studied the authorities submitted by the respondent/plaintiff reported as, *M/s. Chheda Housing Development Corporation Vs. Bibijan Shaikh Farid & Ors., 2007(3) ALL MR 780; Sonu Babu Bhambid Vs. Dream Developers 2009 ALL SCR 2396; Mohd. Mehtab Khan Vs. Khushunma Ibrahim, AIR 2013 Supreme Court 1099; Suresh Chandra Nanhorya Vs. Rajendra Rajak, 2007 ALL SCR 233*. They are become profitable to me to arrive at the conclusion. Thus, the order.

ORDER

- 1) The appeal is allowed.
- 2) Order passed by Ld. Trial Court on application Exh. 5 in RCS No. 114/2019 is hereby set aside. The application Exh. 5 is hereby rejected.

- 3) No order as to costs.
- 4) The copy of this order be sent to the lower court for information and compliance.

Dated:- 03rd January, 2020.

(K. S. Kulkarni)
Ad-hoc District Judge - 4,
Kolhapur.



ORDER BELOW EXHIBIT NOS. 1 IN
Misc. Civil Appeal No. 19/2020
(Bhagwan Ramchandra Patil Vs. Krishnat Ganapati Patil)

OPERATIVE ORDER

- 1) The appeal is allowed.
- 2) Order passed by Ld. Trial Court on application Exh. 5 in RCS No. 114/2019 is hereby set aside. The application Exh. 5 is hereby rejected.
- 3) No order as to costs.
- 4) The copy of this order be sent to the lower court for information and compliance.

Dated:- 03rd January, 2020.

(K. S. Kulkarni)
Ad-hoc District Judge - 4,
Kolhapur.