

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4875 OF 2023

Parasmal Motilal Jain

Age : 55 years, Occ. Agri. And Business,

R/o. Jain Complex, New Mondha Road, Basmath

Tq. Basmath, Dist. Hingoli.

...Petitioner

Versus

1. Mahavir Motilal Jain

Age : 50 years, Occ. Agri. And Business,

R/o Jain Complex, New Mondha Road, Basmath

Tq. Basmath, Dist. Hingoli.

2. Dharamchand Motilal Jain

Age : 45 years, Occ. Agri. And Business,

R/o Jain Complex, New Mondha Road, Basmath

Tq. Basmath, Dist. Hingoli.

...Respondents

Advocate for Petitioner : Mr. Sushant V. Dixit

Advocate for Respondent No.1 : Mr. Pradeep V. Ambade

Advocate for Respondent No.2 : Mr. H. I. Pathan

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 29th NOVEMBER 2023

PRONOUNCED ON : 8th DECEMBER 2023

ORDER :

. Heard learned counsel for the respective sides finally.

1. The petitioner is challenging concurrent finding of facts recorded

against him for clamping interim injunction of not to create third party interest in the suit properties till the decision of the suit. The petitioner is original defendant and respondents are original plaintiffs in Special Civil Suit No.2/2023. Temporary injunction was granted by order dated 01.02.2023 below Exhibit-5 is confirmed by judgment and order dated 01.04.2023 passed in Miscellaneous Civil Appeal No.5/2023.

2. The petitioner and respondents are real brothers and the subject matter is land gut no.150/6/B, 109/2/c and 109/2/d situated at Basmath, District Hingoli. The respondents have filed Special Civil Suit No.2/2023 for declaration and injunction. They have claim their shares in the suit land. A plea has been taken that on 28.02.2022 there was a oral partition as the suit land were jointly purchased by all the brothers. On 05.01.2023, partition deed was executed amongst the brothers. As the petitioner refused to act upon the partition, the suit has been filed with application for temporary injunction.

3. By written statement, the petitioner challenged all the contentions regarding oral partition and the partition deed. The suit properties were exclusively purchased by the petitioner by three registered sale deeds. The respondents are not concerned with the suit land. It is further contended that they prepared forged documents and

offence bearing C.R. No.427/2022 has been lodged against them. It is further stated that consent deed dated 31.07.2019 is forged. The parties are doing separate business. The house property has been mortgaged to incur loan from Union Bank of India and therefore to repay the loan, the respondents wanted to use the suit lands. Application at Exhibit-5 is also thus contested.

4. The learned Counsel for the petitioner submits that three registered sale deeds executed in favour of the petitioner indicate that the petitioner is exclusive owner. The theory of the respondents that from joint nucleus, the suit properties are purchased in the name of petitioner, is false for want of material particulars. The consent deed dated 31.07.2019 and partition deed dated 05.01.2023 are forged and no right can be claimed on that basis by the respondents.

5. The learned Counsel submits both the Courts below committed perversity in relying Sammatipatra which is forged. Both the Courts below should not have relied upon the partition deed dated 05.01.2023 which is unregistered. The learned Counsel submits that both the Courts below committed error of jurisdiction in clamping injunction against him.

6. The learned Counsel for the petitioner in rejoinder submitted that dispute between the parties arose in 2022. Before that he stood guarantor for the wife of respondent no.2. Learned Counsel seeks reliance upon the judgment in the matter of **Kashi Math Samsthan and Anr. Vs. Srimad Sudhindra Thirtha Swamy and Anr.**, AIR 2010 SC 296, paragraph no.13.

7. The learned Counsel for the respondents supports both the impugned judgments and orders. He would submit that there are disputes between the parties over the ownership. Even a criminal case has also been filed. The parties have taken loan from the financial institution and there is possibility of alienation. He has invited my attention to the signatures of the petitioner on consent deed dated 31.07.2019. It is submitted that these brothers are inter se guarantors for the financial assistance secured from the Bank. It shows that the petitioner is not the exclusive owner.

8. Learned Counsel has invited my attention to registered mortgage deed. The petitioner is a guarantor for wife of respondent no.2. Respondent no.1 is running business in one of the suit land. My attention is invited to communication dated 18.05.2023 issued by the

Nayeb Tahasildar and panchanama to show that they are in possession of the suit land. The parties have decided to partition the properties by memorandum dated 05.01.2023.

9. I have considered the rival submissions of the parties. There are concurrent findings of the facts recorded by both the Courts below. The suit lands are not the ancestral properties. Those can be either self acquired properties of the petitioner or the properties of joint ownership of the parties. The status of the properties can be examined after the full fledged trial. The registered sale deed discloses only name of the petitioner. The consent deed dated 31.07.2019 and memorandum of partition dated 05.01.2023 are incompatible with the claim of the petitioner.

10. Both the Courts below have considered consent deed dated 31.07.2019 and partition deed dated 05.01.2023 and recorded a guarded finding that no conclusion can be drawn at that stage. Though the petitioner has denied the signatures on these documents, the plea of forgery put-forth by the petitioner cannot be accepted as a gospel truth. Similarly although there are sale deeds showing exclusive title of the petitioner, the subsequent conduct of the parties of occupying the suit

land jointly and incurring loan is inconsistent with the claim of the petitioner. Both the Courts below have arrived at reasonable and plausible conclusion. At this stage of the proceeding, there are words against words and documents against documents. A full-fledged scrutiny is needed to arrive at particular conclusion.

11. It appears from record that the petitioner has lodged an offence bearing C.R. No.427/2022 of forgery against the respondents. He is denying signatures over the consent deed and partition deed. The relations between the parties are strained. The apprehension expressed by the respondents that the petitioner is likely to alienate the property-suit land cannot be said to be misplaced.

12. It further reveals from record that all the brothers are indebted. Union Bank of India as well as Shri. Vishneshwar Nagari Sahakari Bank are the creditors. In this situation, the possibility of alienating the suit land cannot be ruled out. I am of the considered view that to avoid the complication and multiplicity of the litigation, the injunction is necessary.

13. The respondents have rightly pointed out registered mortgage

deed dated 24.03.2021 indicating that the petitioner is a guarantor to the wife of respondent no.2 and the property mortgaged is one of the suit land that is Survey No.109/2/D. A certificate dated 03.07.2023 corroborates the transaction. These circumstances are inconsistent with the claim of the petitioner. The letter dated 18.05.2023 issued by Nayeb Tahasildar, Basmath and panchnama show that there is a joint possession. Panchnama dated 21.11.2022 which is produced across bar does indicate that the respondent no.2 is doing business in Gut No.150/6/B. This creates doubt about the claim of the petitioner.

14. I do not find any perversity or patent illegality in the finding recorded by both the Courts below. The judgment cited by the petitioner in the matter of Kashi Math Samsthan (supra) does not enure to his help. There is strong prima facie case against the petitioner. The irreparable loss if injunction is not granted is apparent. Both the Courts are justified in granting injunction against the petitioner. The petition is devoid of merit. It is dismissed.

[SHAILESH P. BRAHME, J.]

15. After pronouncement of the judgment and order, the learned Counsel for the petitioner requests for the continuation of interim relief

which was in operation. He submits that by order dated 11.09.2023, after hearing the parties interim relief was granted.

16. The learned Counsel for the respondent opposes the request of the learned Counsel for the petitioner. He submits that as the matter was to be settled interim relief was granted on 11.09.2023. It was not on merits.

17. Initially, by order dated 26.04.2023 an order of status quo was passed. Thereafter on 11.09.2023 ad-interim relief in terms of prayer clause 'B' was granted. It is in operation till final decision.

18. In view of the above, interim relief shall operate for further period of four weeks from today.

[SHAILESH P. BRAHME, J.]

Najeeb.