

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

WRIT PETITION NO. 306 OF 2016

Ranjeet Somnath Chavan,
Age: 38 years, Occupation: Agriculture,
and Legal Practitioner,
R/o Chikalthan Tq. Kannad,
District Aurangabad.

...PETITIONER

VERSUS

1. Somnath Pandharinath Chavan,
Age: 64 years, Occupation: Agriculture,
R/o Chikalthan Tq. Kannad,
District Aurangabad.
2. Urmila Pramod Borse,
Age: 44 years, Occupation: Household,
R/o as above.
3. Sheetal Ranjeet Chavan,
Age: 34 years, Occupation: Household,
R/o At Present Nandur,
Tq. Rahata Dist. Ahmednagar.

...RESPONDENTS

Mr. V. D. Salunke , Advocate for petitioner.
Mr. R. A. Tambe, Advocate for respondent No.3.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 7th August, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned

advocates for the parties appearing finally, by consent.

2. Petitioner is original plaintiff in Regular Civil Suit No.136 of 2014 filed for partition and separation possession against father Somnath Pandharinath Chavan, sister Urmila Pramod Borse and wife Sheetal Ranjeet Chavan. It is petitioner's case in the suit that, properties bearing Gut No. 497 and 498 including 14 *Anna* share in well water situated in Gut No.306 is shown to have been given in share to his wife Sheetal in the revenue record by making an application therefor, was by way of family arrangement, in order to take benefit of certain government schemes.

3. It further appears to be his case after hearing learned counsel for petitioner that, wife of present petitioner Sheetal has been residing in Ahmednagar District and the land is in possession of plaintiff and other family members. Plaintiff/ petitioner had been suffering certain mental illness and thus his father had shown that aforesaid property is being given to Sheetal by way of partition. However, intention has been merely a family arrangement in order to take benefit of certain Government schemes. As such, according to him, revenue record which is made for fiscal purposes would not be able to contain and govern

factual position about cultivation of properties bearing Gut No. 497 and 498. He, therefore, contends that, finding recorded by two courts hitherto about possession of Sheetal is improper.

4. That apart, learned counsel during the course of submissions has adverted to written statement to the counter claim made by Sheetal against the plaintiff seeking perpetual injunction whereunder according to him it has been referred to that manager of joint family cannot be injuncted from enjoyment of unpartitioned properties.

5. He submits that, courts apparently by using terminology as 'plaintiff' for the counter claimant and the original plaintiff as 'defendant' in the counterclaim, have got confused themselves while deciding the matter.

6. He submits that, initially notice on exhibit 5 in Regular Civil Suit No. 136 of 2014 filed by petitioner had been issued. He submits that, may be exhibit 5 which was filed for reason, predominantly based on section 85 of the Maharashtra Land Revenue Code and its operation, had been rejected which was moved seeking restraint on alienation of property by Sheetal.

7. He submits that, in her counterclaim Sheetal had filed an application for temporary injunction at exhibit 29, and the same has been erroneously granted considering that the property is shown to have been partitioned in her favour under an application by father-in-law Somnath Pandharinath Chavan pursuant to Section 85 of the Maharashtra Land Revenue Code. However, he submits that Section 85 of the Maharashtra Land Revenue Code has application in different circumstances and it cannot conclusively be said that partition would be effected under an action pursuant to the same while there is dispute before civil court. He submits that, appellate court's order is intriguing while it says the appeal is allowed, the order under Exhibit-5 set aside, and the order of injunction against plaintiff and others has been confirmed. According to him it suggests that appellate court has not followed and appreciated the matter in proper perspective.

8. Countering aforesaid submissions learned counsel for the respondent No.3 Sheetal Mr. R.A. Tambe states, it has come on record *prima facie* that Sheetal is in possession of the disputed property. He submits that, there is sufficient record made available showing Sheetal to be in exclusive possession of property got in partition effected under application of Somnath. Partition had

taken place wayback in 2008 and mutation entry bearing No. 3529 had accordingly taken place, Sheetal's name has been appearing in ownership and cultivation columns. Not only that, Sheetal has been cultivating lands Gut No. 497 and 498 but also she has cultivated sugarcane crop, and supplied the same to various sugar factories, payment receipts are also placed on record, showing clearly Sheetal is recipient.

9. He submits that, while considering the case for temporary injunction what is germane to be considered is possession of property as would be subsisting on the date of the suit. He submits that, along with that, other ingredients as are required for granting temporary injunction are favouring Sheetal. He submits that, while considering such ingredients, court has taken into account section 14 of the Hindu Succession Act, and observed she is entitled to enjoy the property accordingly.

10. He submits that, concerned properties bearing gut No. 497 and 498 along with share in well water is an absolute property and she is entitled to get same. He therefore submits, *prima facie* Sheetal being in possession, she being cultivating the land, burden in respect of the same is sufficiently discharged. Balance of

convenience also lies in her favour in the first place for she is a driven out daughter-in-law along with her daughter and her only source of livelihood is cultivation of land with the aid of water from well as referred to hereinabove. As such, letting Ranjeet, Somnath and Urmila interfering with her absolute property would cause irreparable loss to her. Therefore, he submits that, when even a trespasser in settled possession is entitled to temporary injunction as can be gathered from various rulings of High Court and the Supreme Court, Sheetal is far more deserving the same. He therefore, urges to set aside the order passed in appeal by appellate court putting restraint on Sheetal's power to dispose of property.

11. Having heard the learned counsel as aforesaid, the position as on record is apparent that Somnath under an application has purportedly partitioned properties Gut No. 497 and 498 in favour of Sheetal along with right to water in well situated in land Gut No. 306. Mutation entry bearing 3529 has taken place wayback in 2008. Since then ownership and cultivation columns show Sheetal to be in possession and cultivation of said property. Aforesaid fact gets reinforced by sugar factory receipts showing that sugarcane being supplied by Sheetal and payment therefor being received by

her.

12. The contention that, Sheetal is residing elsewhere in the face of such situation is not an indication of possession of the property by petitioners. As a matter of fact Somnath, Urmila and Ranjeet have not been able to show that they have been in possession of lands Gut No. 497 and 498 in any way after 2008. While it seems to be a definitive property given in possession of Sheetal, the argument that a manager cannot be restrained from possession of property peculiarly in the facts of this case would lose significance, for, *prima facie* Sheetal has discharged burden of being in possession of suit property. Aforesaid coupled with findings by two courts as referred to are appearing in favour of Sheetal, it does not appear that the writ petition gives rise to a case for consideration to be meddled with under supervisory jurisdiction. Writ petition, as such, fails and stands dismissed. Rule is discharged.

(SUNIL P. DESHMUKH, J.)

vjg/-