

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11536 OF 2014

Smt. Hirabai Harischandra Thorat (since deceased)
through LR.s. and others ...Petitioners

Versus

Shri. Raghunath Baburao Tupe
And others ...Respondents

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Mr. R.S. Apte, Senior Advocate i/b. S.C. Wakankar, Advocate for the
Petitioners.

Mr. A.V. Anturkar, Senior Advocate i/b. Kalyani Tulankar, Advocate for
Respondents No.1 to 5, 7 to 19 and 39.

Mr. Mihir Raje, Advocate for Respondent No.6.

Mr. Yakshay Chheda, Advocate for Respondents No.36 and 36B.

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CORAM : R. G. KETKAR, J.

DATE : 21st JANUARY, 2019

P.C.

1. Heard Mr.R.S. Apte, learned Senior Counsel for the petitioners,
Mr. A.V. Anturkar, learned Senior Counsel for Respondents No.1 to 5, 7 to
19 and 39, Mr. Mihir Raje, learned Counsel for Respondent No.6 and Mr.
Yakshay Chheda, learned Counsel for Respondents No.36 and 36B, at
length.

2. The petitioners have moved this Court as per the administrative
order passed by the Hon'ble the Chief Justice as the regular Court presided
over by Hon'ble Mr. Justice K.K. Tated has passed 'not before me' order.

3. By order dated 12.9.2017 the parties were referred to mediation of Shri S.G. Deshmukh, Counsel of this Court. In pursuance thereof, Mr. Deshmukh has submitted mediation report in a sealed envelope. During the course of hearing, the sealed envelope was opened. Same is taken on record and marked 'X' for identification. The learned Mediator has submitted failure report. In view thereof, the parties were heard at length.

4. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'plaintiffs', have challenged the order dated 14.8.2013 passed by the learned 4th Joint Civil Judge, Junior Division, Pune below Exhibit-5 in R.C.S. No.325/2011 as also the judgment and order dated 8.8.2014 passed by the learned District Judge-3, Pune in Misc. Civil Appeal No.343/2013. By these orders, the Courts below rejected the application filed by the plaintiffs *inter alia* praying for injunction restraining respondents, hereinafter referred to as the 'defendants' from (a) alienating the suit properties, (b) parting with possession of the suit properties to third party, and (c) changing the nature of the suit properties.

5. In support of this petition, Mr. Apte has invited my attention to paragraph-12 of the impugned order dated 8.8.2014. In paragraph-12, the learned District Judge referred to the amendment to Section 6 of the

Hindu Succession Act, 1955 (for short, 'Act'). He submitted that the findings recorded by the learned District Judge in paragraph-12 are totally perverse. The learned District Judge has not properly interpreted Section 6 of the Act.

6. He further submitted that the Courts below proceeded on the premise that the plaintiffs being daughters of deceased Shankar have relinquished their right, title and interest in the suit properties in favour of their brother Baburao. He submitted that the relinquishment deed requires registration. In the present case, the Courts below relied upon the mutation entries and held that *prima facie* the plaintiffs have relinquished their right in the suit properties. He submitted that so long as suit for partition instituted by the plaintiffs is pending, the Courts below were not justified in rejecting the application.

7. On the other hand, Mr.Anturkar submitted that on 16.1.1962, the plaintiffs gave application for deleting their names and entering name of Baburao. In pursuance of that application, statements were recorded and mutation entry No.5640 was certified on 14.3.1963. He also invited my attention to the application dated 16.11.1967 made by Ramabai Shankarrao Tupe for entering the names of L.Rs. of Tahnubai Shankarrao Tupe who died on 13.8.1966. The names of the plaintiffs were deleted on the ground that they have given up their rights in the properties of

deceased Shankar. On the basis of the application and the statements, names of the plaintiffs were deleted.

8. Mr. Anturkar relied upon the decision of this Court in **Ramdas Chimna Vs. Pralhad Deorao, AIR 1965 Bom 74** to contend that the oral relinquishment of the property exceeding value of Rs.100/- is permissible and it does not require registration.

9. He also relied upon the decision of the Apex Court in the case of **Mandali Ranganna & others Vs. T. Ramachandra & Ors., AIR 2008 SC 2291** to contend that grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The Court will not interfere only because the property is a very valuable one.

10. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. From the material on record *prima facie* it appears that the plaintiffs had given application for deleting their names and entering name of their brother Baburao. In pursuance thereof, mutation entry No.5640 was certified and names of the plaintiffs were deleted on the basis of their statements and the application. It further appears that after the death of Tahnubai, widow of Shankar Tupe on 13.8.1966, an

application was made for entering the names of L.Rs. of the deceased Tahnubai. That was certified on 14.12.1967 by deleting the names of the plaintiffs on the ground that they had released their rights in the properties of the deceased Shankar. The mutation entry was made on the basis of the application and the statements. Thus, *prima facie*, the plaintiffs had orally relinquished their rights in the suit properties as far back as in the year 1967. It has also come on record that in the year 1998, the partition was effected by way of a registered deed between some of the family members. Earlier to that some of the suit properties were transferred in favour of defendant No.36. The present suit is instituted in the year 2011. Thus, the plaintiffs have approached the Court belatedly. In the case of **Mandali Ranganna** (supra), the Apex Court has observed in paragraph-18 thus:

“18. While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto, viz., existence of a *prima facie* case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.

Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of

mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively.”

11. In the case of **Ramdas Chimna** (supra), Hon'ble Mr. Justice R.M. Kantawala (as the learned Chief Justice then was) has observed thus :

“Mr. Deshpande, however, drew my attention to the provisions of Section 17 of the Registration Act. There is nothing in the Registration Act or the provisions of Section 17 thereof, which requires any particular transaction to be recorded in writing. That Act requires only that when certain transactions are so recorded, the writing shall be registered. There is nothing in the Transfer of Property Act or any other law that I am so far aware which requires that a mere extinguishment of an interest in the immovable property shall be in writing. The relinquishment by Bainabai of her interest in the joint family property was merely abandonment of her interest in the joint family property in favour of her two sons. Such a relinquishment or abandonment of interest in the joint family property, even though it consists of immovable properties and is of the value of Rs.100/- and upwards, can be effected without a written instrument, though if one is executed, it would undoubtedly require registration under Section 17 of the Registration Act, *Gauri Bai v. Gaya Bai*, AIR 1927 Nag. 44.

Thus, the oral relinquishment by Bainabai of her interest in the joint family properties in favour of her two sons after the death of Ramji was valid and effective in law. Since the time of that relinquishment she ceased to have any interest in the joint family properties. The learned Additional District Judge was in error in taking the view that an oral relinquishment, even if proved, would not divest Bainabai of her interest in the joint family properties.”

12. In view thereof as also for the reasons recorded in the impugned orders, I do not find that the Courts below committed any error in rejecting the application.

13. In the case of **Wander Limited and another Vs. Antox India Private Limited, 1990 (Supp.) SCC 727**, the Apex Court in paragraph-14 has observed as under:

“....., the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court’s exercise of discretion.”

14. Applying the tests laid down by the Apex Court in **Wander Limited's** case (supra) to the facts of the present case, it cannot be said that the Courts below exercised the discretion arbitrarily or capriciously or perversely or that the Courts below had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. This Court will not reassess the material and seek to reach a conclusion different from the one reached by the courts below if the one reached by that courts below is reasonably possible on the material. This Court would normally

not be justified in interfering with the exercise of discretion solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the courts below reasonably and in a judicial manner the fact that this Court would have taken a different view may not justify interference with the exercise of discretion by the Courts below. Hence, the Petition fails and the same is dismissed.

15. At this stage, Mr.Wakankar orally applies for continuation of the statement recorded in the order dated 29.3.2017 and which is continued from time to time, for a period of eight weeks from today.

16. As the plaintiffs desire to challenge this order in the higher court and the interim order is operating from 29.3.2017, I find that the request made by Mr. Wakankar is reasonable. Hence, notwithstanding dismissal of the petition, the statement made by the learned Counsel for the defendants recorded in the order dated 29.3.2017 shall remain in force for a period of eight weeks from today with clear understanding that no extension shall be sought and granted by this Court. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)