

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO.8434 OF 2019

Shri.Narayan Ramu Patil & Ors. ..Petitioners
V/s.
Shri.Hemant Shripati Patil & Ors. ..Respondents

Mr. Prajakt Arjunwadkar, for the Petitioners.

Mr. Umesh H. Pawar, for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 16th DECEMBER 2020

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1. The challenge in this petition, is to the judgment and order dated 14th March 2019 passed by the learned District Judge, at Gadhinglaj in Miscellaneous Civil Appeal No.10 of 2017. By the impugned judgment, the learned District Judge, while dismissing the appeal filed by the petitioners has confirmed the order dated 04th February 2017 below Exhibit-5 passed by the learned Civil Judge Junior Division at Ajara, in Regular Civil Suit No.18 of 2014. The learned Trial Court has granted temporary injunction in favour of the respondents restraining the petitioners from interfering with the peaceful possession of the respondents over the suit properties.

2. Regular Civil Suit No.18 of 2014 is filed by the respondents for injunction restraining the petitioners from interfering with the possession of the respondents over the suit property more specifically described in paragraph 1 of the plaint. Paragraph 1 of the plaint describes in all seven properties being part of Gat No.54, 105, 214, 210, 185, 198 and 220 of village Shelap, Taluka-Ajara, District-Kolhapur.

3. The case made out in the plaint is that the aforesaid properties were the ancestral properties of Rama Kushapa Patil who expired on 27th September 2011. Savitribai Patil, wife of Rama expired somewhere in the year 2002. Rama and Savitribai had two sons namely Shripati Patil and Narayan Patil and three daughters namely Urmila, Vatsala and Anusaya who are the petitioner Nos.2 to 4 herein. The petitioner No.5 Kavita Patil is the daughter-in-law of Narayan. It is the material case that there was a partition between Rama and his two sons Shripati and Narayan, on 03rd July 2000 in which the suit properties were allotted to the share of Rama. Rama inturn executed a registered will in favour of the respondents (who are the sons of Shripati and grand-sons of Rama Patil) in respect of the suit properties on 20th August, 2011. It was contended that the

partition as well as the will are registered documents and the properties have also been mutated accordingly as per ME No.839.

4. It is in these circumstances, that the suit simplicitor for injunction came to be filed in which an application Exhibit-5 was filed seeking injunction restraining the petitioners or anybody on their behalf from interfering with the cultivating possession of the respondents over the suit property.

5. According to the petitioners the said partition is illegal as it was executed by Rama behind the back of the petitioner Nos.2 to 5 and no share was allotted therein to Savitribai. Thus according to the petitioners suit properties continued to be jointly owned and cultivated. It is contended that in the year 2000 there was a proposal for acquisition of the lands for Surfnalla Dam and therefore, the alleged Partition Deed was executed. The petitioners have also challenged the disposition, made by the said will dated 20th August, 2011.

6. The learned Trial Court by an order dated 04th February 2017 has allowed the application thereby granting temporary

injunction in favour of the respondents, which order has been confirmed in appeal.

7. I have heard Mr. Arjunwadkar, the learned counsel for the petitioner and Mr.Pawar, the learned counsel for the respondents. With the assistance of the learned counsel for the parties I have gone through the record.

8. It is submitted by Mr. Arjunwadkar, the learned counsel for the petitioners that the Trial Court was in error in granting temporary injunction and the learned District Judge has failed to correct the error. It is submitted that the partition of the year 2000 cannot be legal and valid in the absence of Savitribai being a party thereto or in the absence of a share being allotted to her. It is submitted that once the partition is illegal, the suit properties cannot fall to the exclusive share of Rama, as a result of which the subsequent disposition of the suit properties in favour of the respondents by the will dated 20th August 2011 is also illegal and invalid. It is submitted that the petitioner Nos.2,3 and 4 (being the daughters of Rama Patil) have filed independent suit being RCS No.75 of 2011 for partition of their share and have also challenged the validity of the registered partition as well as the will therein. It

is pointed out that the petitioner Nos.2 to 4 have sought a declaration that the said partition and the will is not binding on them. It is thus submitted that the validity of the partition and the will are subject matter of challenge in an independent suit, before the Competent Court.

9. On behalf of the petitioners reliance is placed on the decision of the Supreme Court in **Vineeta Sharma V/s. Rakesh Sharma and Others**¹, in order to submit that the petitioner Nos.2 to 4 being daughters of Rama Patil, would be entitled to a share by birth and therefore they could not have been excluded from the partition of the year 2000.

10. Mr.Pawar, the learned counsel for the respondents has supported the impugned order. It is submitted that the temporary injunction has rightly been granted, in the face of two registered documents namely the Partition Deed of the year 2000 and the Will dated 20th August 2011. It is submitted that the petitioner No.1 Narayan is a party to the Partition Deed and cannot conceivably challenge the same. It is submitted that by virtue of a Mutation Entry No.839 the properties have been recorded in the name of the

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respondents on 14th December 2012. It is pointed out that the petitioner Nos.2 to 4 have not pressed their application for temporary injunction in RCS No.75 of 2011 and therefore cannot oppose the relief of temporary injunction in favour of the respondents. It is submitted that petitioner Nos.1 and 5 cannot join the petitioner Nos.2 to 4 in resisting the order of the temporary injunction in favour of the Respondents particularly when the petitioner No.1 is a party to the partition deed of the year 2000.

11. I have carefully considered the rival circumstances and the submissions made and I do not find that a case for interference is made out. *Prima facie* it appears that the properties which were the ancestral properties of Rama Patil, were partitioned between Rama, Shripati and Narayan in the year 2000 in which the suit properties fell to the share of Rama Patil. By the will of the year 2011, Rama has bequeathed the properties in favour of the respondents. These documents are for the first time sought to be challenged by the petitioner Nos.2 to 4 in RCS No.75 of 2011. It is necessary to note that the petitioner Nos.2 to 4 sought temporary injunction in the said suit which was subsequently not pressed. *Prima facie* it appears that both these documents have been acted upon. There are two mutation entries the first one been being ME

No.554 which is taken on the basis of the Deed of Partition and the subsequent being ME No.839 which is recorded on the basis of the will in which the suit properties have been recorded in the name of the respondents on 14th December 2012. *Prima facie* the Revenue record both regarding Record of Rights (Form No.7) and the Crop Statement (Form No.12) shows the possession of the respondents. Thus to my mind no exception can be taken to the Courts below granting temporary injunction in favour of the respondents.

12. In **Vineeta Sharma** (supra) the Supreme Court has inter alia held that the amended provisions of Section 6 of the Hindu Succession Act, are retroactive in operation. It has been held that the daughters born before the amendment can claim right only from 9/9/2005. *Prima facie*, in the present case, the ancestral properties of Rama were partitioned in the year 2000 much before 9/9/2005. *Prima facie*, sub-Section 5 of Section 6 would indicate that nothing in Section 6 shall apply to partition which has been effected before 20th day of December 2004. The explanation to sub-Section 5 of Section 6 provides that the partition means any partition made by execution of deed of partition duly registered under the Registration Act, 1908 or partition effected by decree of Court. *Prima facie*, at this stage, it can be seen that the partition is effected in the year

2000 by registered deed. Thus, for the present purpose, no exception can be taken to the said partition between Rama, Shripati and Narayan.

13. I find that there is substantial force in the argument on behalf of the respondents that Narayan being one of the parties to the partition cannot conceivably join the petitioner Nos.2 to 4 in challenging the partition. The ground based on Savitribai not being allotted a share cannot *prima facie* outweigh the other considerations at this stage, as in a given case a party who is having a share in ancestral property can give up his/her share in favour of the other shares/coparceners. I would hasten to add that this is only a *prima facie* opinion and the question can be gone into at the trial. However, for the limited purpose of grant of the temporary injunction, in the face of the two registered documents one of Partition and other of Will, the Revenue Record and the fact that the petitioner Nos.2 to 4 have failed to press and obtain any interim relief in RCS No.75 of 2011 no case for interference is made out.

14. I have gone through the impugned orders and they do not suffer from any infirmity so as to require interference. The

petition is without any merit and it is accordingly dismissed, with no order as to costs.

It is made clear that the observations made herein are essentially of a prima facie nature for the limited purpose of examining challenge to the grant of temporary injunction and the learned Trial Court shall not be influenced by the same at the trial of the suit.

C.V. BHADANG, J.