

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

WRIT PETITION NO.5454 OF 2021

Babasaheb Shankar Tarake and Ors.

..Petitioners
(Org. Deft. Nos.6 to 8)

Versus

Mallinath Ramchandra Mhamane and Ors.

..Respondents
(Org. Plf. Nos.4 to 8
&Org. Def. No.1 to 5)

Mr. Anant Vadgaonkar, for the Petitioners.

Mr. R. V. Govinlkar a/w Shaba N. Khan, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 4th APRIL, 2022

PC.

1. This petition is by the defendants to a suit for partition, separate possession and declaration that the sale-deeds are not binding on the share of the respondents/plaintiffs.

2. Facts necessary for deciding the petition are as under :-

The petitioners and defendant Nos.1 to 5 are successor in interest of deceased Ramchandra.

3. Defendant Nos.7, 8 and 9 have purchased part of the suit property vide sale-deeds dated 25th September, 2020 and 30th July, 2020.

4. In the backdrop of the claim for partition and aforesaid challenge to the sale-deeds, respondents/plaintiffs took out an application for grant of temporary injunction restraining the petitioners/defendants from interfering with their possession over the suit property.

5. The Court of Civil Judge, Junior Division, Mohol vide order dated 11th January, 2021 passed below Exh.5 in aforesaid suit being RCS No.169 of 2020 rejected the prayer, whereas at the behest of respondents/plaintiffs in an Appeal being MCA No.7 of 2021 prayer under Order XLIII Rule 1(r) of the CPC, the injunction came to be granted vide order impugned order dated 12th March, 2021. As a consequence of aforesaid impugned order, the petitioners are restrained from obstructing plaintiffs possession and enjoyment over the suit property till disposal of the suit.

6. The submissions of Mr. Vadgaonkar, counsel appearing for the petitioners/defendants are, the petitioners have purchased the suit property based on the partition executed *inter se* between the legal representatives of deceased Ramchandra pursuant to the provisions of the Maharashtra Land Revenue Code. According to him, based on the said partition vide order passed by the Tahsildar on 25th June, 2001 Mutation Entry No.618 came to be recorded in favour of the defendant Nos.1 to 5, who in turn sold the suit property vide above referred sale-deeds to the present petitioners. It is claimed that defendant Nos.1 to 3 have got their names

recorded by virtue of aforesaid order of Tahsildar and the order of Tahsildar is based on relinquishment of share by the plaintiff Nos.1 and 2 as recorded by the Tahsildar.

7. In the aforesaid background, it is claimed that since the defendant Nos.1 to 3 have received the property being legal representative of Ramchandra and by virtue of relinquishment recorded by the Tahsildar in his above referred order, the Trial Court was justified in refusing the prayer for injunction. According to him, the order dated 25th June, 2001 passed by the Tahsildar is not challenged till this date and as such, the said order was accepted by the respondents/plaintiffs for all these years but for the claiming share in the suit property aforesaid proceedings. As such contentions are, since the respondents/plaintiffs were not diligent, the Trial Court was justified in rejecting the injunction which fact is not appreciated properly by the Appellate Court. So as to substantiate aforesaid contention, Mr. Vadgaonkar has drawn support from the judgment of the Apex Court in the matter of ***Mandali Ranganna and ors. Vs. T. Ramchandra and Ors.*** reported in ***(2008) 11 SCC 1***, particularly, paragraph 18. He would further urge that the grant of injunction is equitable relief. A valid registered sale-deed for a consideration follows the possession. The such principle of law ought not to have been ignored by the Appellate Court.

8. While countering the aforesaid submissions, counsel for

the respondents/plaintiffs would support the order of the Appellate Court. According to him, the plaintiffs/respondents have demonstrated the *prima-facie* case of settled possession over the aforesaid suit property in the backdrop of jointness of family. According to him, the order of the Tahsildar is not produced so as to appreciate the same before the Court below. He would urge that even plaintiff No.3 was not a party to the proceedings before the Tahsildar and as such, the orders therein are vitiated, as the revenue entries are obtained by suppressing material fact. As such, it is claimed that the order impugned is justified and petition is liable to be dismissed.

9. Considered submissions.

10. The Trial Court by relying on the order dated 25th June, 2001 whereby the partition was effected by the order of Tahsildar resulting into Mutation Entry No.618 and the failure of the plaintiffs to challenge the said entry has formed an opinion that the respondents/plaintiffs were not diligent in pursuing their right.

11. The Appellate Court while re-appreciating the entire matter has noticed that the order of the Tahsildar recording partition and granting mutation is not produced on record. The fact that the plaintiff No.3 was not a party before the Tahsildar is not disputed by the petitioners. As such, the Appellate Court proceeded to grant injunction in favour of the respondents/plaintiffs.

12. I have appreciated the submissions.

13. The case of the petitioners is based on the Mutation Entry No.618 whereby the names of defendant Nos.1 to 3 are recorded in the revenue record of the suit property.

14. If we appreciate the contentions of the petitioners, the fact remains that under Section 85 of the Maharashtra Land Revenue Code, the Revenue Officer subject to the provisions of the Maharashtra Prevention of Fragmentation and Consolidation Holdings Act, may partition on a decree of a Civil Court or on an application of co-holders in a manner provided therein. The procedure prescribed is, the co-holder, if applies to Collector for partition of the share in a holdings, partition can be effected, provided such partition shall not be ordered by the Collector, where the question of title or entitlement was raised. Once it is demonstrated by the plaintiffs that plaintiff No.3 was not party to the proceedings under Section 85 of the Maharashtra Land Revenue Code, it has to be inferred that the order of the Collector/Tahsildar in granting partition that too based on the alleged relinquishment (an unregistered document) is at its face value illegal. In the aforesaid background, even though the defendant Nos.1 to 3 are the co-sharers in the suit property, the Appellate Court was justified in granting injunction on the ground that there is presumption as to jointness of the family. The fact that the suit property was ancestral and the parties i.e. defendant Nos.1 to 5 and the plaintiffs are the

legal heirs of Ramchandra is not in dispute. Apart from above, the petitioners cannot be termed to be holders or joint holders or co-sharers. That being so, the Appellate Court, in my opinion, was justified in granting temporary injunction.

15. The claim of the counsel for the petitioners that the respondents/plaintiffs were not diligent in pursuing their rights, if appreciated, the fact remains that the proceedings before the Tahsildar becomes *void abinitio*, particularly, when the relinquishment deed which ought to have been registered and relied upon by the Tahsildar is contrary to law. The fact remains that there was no relinquishment on the part of the plaintiff No.3. As such, order of effecting mutation entry is also illegal. In these backgrounds, in my opinion, no case for interference in the order impugned is made out.

16. The petition as such fails, dismissed.

[NTIN W. SAMBRE, J.]