

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 990 OF 2022

MARUTI MAHADEO RAJMANE

....PETITIONER

V/s.

RAJENDRA MALAPPA BIRAJDAR AND ORS

.....RESPONDENTS

Mr. Ajay A. Joshi Advocate for the Petitioner

Mr. Ashutosh M. Kulkarni Advocate for the Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 11, 2022.

P.C.:

- 1) Heard respective counsel.
- 2) Petitioner initiated a Suit for declaration of ownership to the extent of half share in the Suit property and cancellation of Sale Deed dated 14/01/2020 executed by Defendant no. 1 in favour of Defendant no. 7 and Sale Deed dated 07/07/2020 executed by Defendant no. 7 in favour of Defendant no. 8. Partition and possession of half share in the Suit property is also sought and

injunction is prayed restraining Respondents from interfering or causing any interference with the peaceful possession.

3) The Trial Court was pleased to grant injunction vide Order below Exh. 5 & 20 thereby Defendant nos. 7 & 8 were restrained from forcibly taking possession of the Suit property.

4) Appellate Court reversed the same vide order impugned dated 06/12/2021. As such, this Petition.

5) Submissions of Mr. Ajay Joshi, learned counsel for the Petitioner are, prayer for injunction as could be considered in the backdrop of provisions of Order XXXIX Rule 1(c) of the Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC' for the sake of brevity) r/w Section 38 of the Specific Relief Act if appreciated, fact remains that injunction in case of threat of dispossession or in case of causing any injury to the Plaintiff in relation to any property in dispute in the Suit can be granted. According to him, there is presumption as to jointness of the family and that being so, since Suit property belongs to joint family, Respondents should have been ordered to be restrained from disturbing the possession over the Suit property. Drawing support from the Judgment of the Apex Court in

the matter of **Ramdas Vs. Sitabai**¹ particularly paragraph nos. 9, 12 & 14, he would urge that once it is demonstrated that property is joint family property, temporary injunction ought to have been granted thereby restraining third party from taking or disturbing the possession. On the same line, he would also draw support from the Judgment of this Court in the matter of **Baburao s/o Namdeo Nalwade since (D) thr. L.Rs and others V/s. Tukaram S/o Keshav Nalwade since (D) thr. L.Rs. And others.**²

6) Mr. Ashutosh Kulkarni, counsel appearing for the Respondent would urge that order impugned is passed by the Appellate Court is in tune with earlier partition effected in 1992 between Tamanna, Mallappa and Shrishail. According to him, said partition was duly acted upon and it is never claimed in the Plaint by the Petitioner-Plaintiff that they are in settled possession of the Suit property.

7) Appreciated submissions.

8) Fact remains that 1992 partition inter-se between Tamanna, Mallappa and Shrishail has resulted into Suit property going to the share of Mallappa and as such, Defendant no. 1 Rajendra succeeded

¹ 2009(4) Supreme 698

² 2015 (2) Mh.L.J. 912

to the Suit property being legal representative of Mallappa. Rajendra in turn created third party interest in favour of Defendant no. 7 in 2020 and thereafter Defendant no. 7 in favour of Defendant no. 8.

9) As far as Suit property as mentioned in Plaint is concerned, I am informed that already Petitioner has moved an Application for amendment of Plaint thereby adding other property which has gone to the share of Tamanna and Shrishail. Fact remains that 1992 partition which was acted inter-se between Tamanna, Mallappa and Shrishail is sought to be re-opened in 2020 as the shares of the Plaintiff's mother and other maternal aunt Mantavva were excluded.

10) In the aforesaid background, considering the mutation entries as were existing in favour of Defendant no. 1 based on earlier round of partition, possession alleged to have been received by Defendant no. 7 from Defendant no. 1 who in turn handed over the same to Defendant no. 8 by virtue of transfer of title.

11) Revenue entries, partition effected in 1992 under Maharashtra Land Revenue Code has prompted the Appellate Court to believe that Respondent-Defendant no. 1 at the time of initiation of Suit was in settled possession.

12) In that view of the matter, possession appears to be handed over to Defendant no. 8 by Defendant no. 7 after having received the same from Defendant no. 1.

13) If the case of the Petitioner, independent of the aforesaid revenue record is appreciated, what can be noticed is, even though claim of jointness of family is canvassed, there is no iota of evidence to infer settled possession of Petitioner over the Suit property being member of HUF or as a coparcener.

14) In the aforesaid background, once prima facie it is demonstrated by Defendant no. 1, 7 & 8 that they are in settled possession of the Suit property, the Appellate Court was justified in vacating the injunction to the extent of restraining the Respondents from interfering with the possession.

15) However, having regard to the fact that admittedly Suit property belongs to joint Hindu family and the Petitioner appears to have share in the Suit property, in the fitness of things, it will be appropriate to injunct the Respondents i.e. Defendant nos. 1, 7 & 8 from creating third party interest or charge over the Suit property till disposal of the Suit. Order accordingly.

- 16) Petition stands disposed of in above terms.
- 17) Needless to clarify that observations made herein above are confined to the extent of deciding prayer for injunction.

[NITIN W. SAMBRE, J.]