

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

WRIT PETITION NO. 9478 OF 2015

Ganesh Gulab Khatke

...PETITIONER

versus

Parwatibai Gulab Khatke and others

...RESPONDENTS

.....
Mr. S.G. Chapalgaonkar, Advocate for Petitioner

Mrs. Kalplata Patil Bharaswadkar, Advocate for respondents No. 1 to 3
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 13th OCTOBER, 2015

Order :-

1. This petition has been moved against order dated 26-08-2015 in miscellaneous civil appeal No. 13 of 2015, passed by district judge-1 Nilanga, confirming order dated 27-07-2015 on Exhibit-5 in regular civil suit no. 223 of 2015 passed by civil judge, junior division, Nilanga, whereunder application of respondents No. 1 to 3 - original plaintiffs for temporary injunction had been allowed.

2. Respondents No. 1 to 3 - original plaintiffs in regular civil suit No. 223 of 2015 had prayed for injunction in respect of the property bearing survey No. 6/B1 *admeasuring* 1 Hectare, 34 *Aar* of village Palapur, Taluqa Nilanga, District Latur.

3. After having heard learned counsel for the parties, the position emerges that aforesaid property is ancestral property and had been

kept for maintenance of mother and the same is referred to in the document - memorandum of partition-deed dated 08-04-2009, albeit, the same is disputed by petitioner - defendant No. 1, yet it cannot be overlooked, there is some reference to aforesaid property being kept for maintenance.

4. Learned counsel for petitioner submits that factual position is wide apart, in the sense during the life time of father, said property was being cultivated by defendant no. 1 upon power of attorney executed in his favour, him being eldest amongst brothers. He further purports to submit that he is still continuing to be in possession of the same. There is no dispute that it is an ancestral property. As such, the petitioner being co-parcener/co-owner of the property, he cannot be enjoined from enjoyment of rights over the property.

5. It is being submitted on behalf of respondents No. 1 to 3 that there is no power of attorney in favour of petitioner-defendant No. 1, however, even if that be so, the same came to an end as soon as executent died. It is being submitted that parties are in possession of respective properties with reference to memorandum of partition referred to hereinabove and there is no dispute about the same, though defendant No. 1 has denied his signature.

6. Both courts have recorded the concurrent findings and considered that suit property has been given to the mother for her maintenance and the same has been in her possession since then. It appears that the mother is comfortable with respondents No. 2 and 3 and there is

threat to her possession at the instance of present petitioner and, as such, instituted the suit. Both the courts considered the document and with reference to the same at this stage granted interim injunction. The courts have also observed that the land concerned continued to be in the name of Gulab, husband of plaintiff No. 1 and father of rest of the parties. The property is excluded from the partition. Pursuant to the partition, it is observed that the parties have got their names entered in the revenue record and the suit land had been kept in father's name. Though it is submitted on behalf of the petitioner that co-owner cannot be injuncted, however, looking at the position about possession *prima facie* courts appear to consider that plaintiffs are in possession of the suit property. The orders impugned, as such, appear to be reasoned orders. In the circumstances, I am not inclined to interfere with the orders impugned.

7. Writ petition, as such, stands rejected. Having regard to relationship, the trial court may decide the suit as expeditiously as possible.

8. The observations herein above made in this order are for rejection of writ petition and have no further efficacy. The trial court should not be influenced by this order while deciding the suit on its merits.

Sd/-

(SUNIL P. DESHMUKH, J.)