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

WRIT PETITION NO. 9984 OF 2015

Sheshrao Budhaji Hambarde & ors.PETITIONERS

VERSUS

Rukminbai w/o Ranjeet Suryavanshi & ors.RESPONDENTS

Mr A. G. Godhamgaonkar, Advocate for petitioners;
Mr A. V. Patil, Advocate for respondent No. 7

CORAM : N.W. SAMBRE, J.

DATE : 5th December, 2015

ORAL ORDER :

The petitioners – original plaintiffs suffered refusal of injunction in Regular Civil Suit No.71 of 2014, wherein they have prayed for an order of restraint against one Chaturabai, plaintiff in Regular Civil Suit No.25 of 2001, from interfering in their possession, in the matter of execution of decree passed in the said suit.

2. The application for injunction was initially rejected by the learned Trial Court on 17th June, 2015, which was later on confirmed in the appeal bearing Misc. Civil Appeal No.14 of 2015, preferred by the present petitioners, by an order dated 1st September, 2015. Thus, the present petition.

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3. Heard Mr Godhamgaonkar, learned Counsel appearing on behalf of the petitioners-plaintiffs. He would urge that the petitioners are purchasers of the property out of the share of one of the parties to the suit bearing R.C.S. No.25 of 2001, during its pendency. Though Regular Civil Suit No.2 of 2001, for relief for partition was decreed in favour of the plaintiff to the said suit, namely, Chaturabai, the same was without adjudicating the rights and entitlement of the petitioners to the portion purchased by them. In addition, learned Counsel would urge that pursuant to clause 87 of the Uncodified Hindu Law, their independent suit seeking partition of the property purchased by them (being entitled for the same in law) is very much tenable and would urge that the findings as regards non maintainability of the suit given by the lower appellate court in the order impugned, are not sustainable.

4. Mr Patil, learned Counsel appearing on behalf of respondent no.7 – Chaturabai would urge that she is agitating and claiming her right for partition since 2001 and after having filed Regular Darkhast No.11 of 2007, the suit in question, i.e. Regular Civil Suit No.71 of 2014 was filed by the petitioners, so as to frustrate the decree and claim. According to him, there are concurrent findings recorded by both the Courts below refusing injunction and as such, the petition being devoid of merits, be dismissed.

5. It is required to be noted here that while dealing with an issue as regards grant of temporary injunction in favour of the parties, the Court is

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required to consider as to whether there is a *prima facie* case, balance of convenience and irreparable loss, if any, caused to the parties claiming injunction.

6. It is not in dispute that the petitioners are purchasers of the property in question, which was subject-matter of Regular Civil Suit No.25 of 2001, during pendency of the suit, which fact was well within the knowledge of the petitioners, they being parties to the suit as defendants no.2 and 3. Having contested the said suit for partition and separate possession in the capacity of defendants no.2 and 3, the status of the defendants in a partition suit is also considered as that of co-plaintiffs. Once the petitioners suffered a decree on merits and the said decree was confirmed in Regular Civil Appeal No.17 of 2009, the injunction that is sought by instituting another suit bearing R.C.S. No.71 of 2014, in my opinion, was rightly rejected by both the Courts below, particularly as the decree in earlier suit bearing R.C.S. No.25 of 2001 was passed after hearing them.

7. Apart from above, though Mr Godhamgaonkar, learned Counsel appearing on behalf of the petitioners has invited my attention to the findings recorded by the learned lower appellate court about maintainability of the suit, without expressing any opinion, it would suffice to say that the conclusion drawn by the learned Trial Court appears to be correct.

8. In view of above, in my opinion, the petitioners have failed to demonstrate any *prima facie* case in the matter. Both the Courts below, as

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such, were right in rejecting the application for injunction. No interference is called for. The petition thus fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

amj