

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

WRIT PETITION NO.4356 OF 2014

Yashwant Vasantrao Jadhav

.. Petitioner

Versus

Sou. Anuradha Rajendra Hawaldar and others

.. Respondents

Mr. Amit B. Borkar, Advocate for the Petitioner.

Mr. Sagar A. Mane, Advocate for Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 13th JANUARY, 2015

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 30.01.2014 passed by the Learned 17th Joint Civil Judge, Junior Division, Kolhapur, by which order the application Exh.35 seeking framing of preliminary issue as regards maintainability of the suit on the touchstone of Section 41(h) of the Specific Relief Act came to be rejected.

2. The rejection by the Trial Court is on the ground that in the application the Defendant has merely stated that there is bar under Section 41(h) of the Specific Relief Act, but has not mentioned as to how there is bar to the maintainability of the suit. The Trial court has further observed that whether the suit is maintainable or not cannot be decided at

this primary stage and the same can be considered at the time of trial after the evidence is recorded. It is the contention of the learned counsel for the Petitioner that a suit seeking injunction in respect of joint family property is not maintainable without their being a prayer for partition. In my view that would be impinge upon the right of the Plaintiff to get reliefs in the suit, but it cannot be said that the suit is not maintainable on the touchstone of Section 41(h) of the Specific Relief Act. Hence, the order passed by the Trial Court rejecting the application cannot be found fault with. No case for interference in the writ jurisdiction of this Court is therefore made out. The Writ petition is accordingly dismissed. However, it would be open for the Petitioner to apply for framing of an issue in that regard, if any such application is made, the Trial Court would consider the same independently without being influenced by the instant order.

[R.M. SAVANT, J]