

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

WRIT PETITION NO.3853 OF 2015

Mr. Sunil Jaywant Sanap and ors. : Petitioners
versus
Sou. Sunita Prakash Roman and ors. : Respondents.

Mr. Abhijeet A Desai for the Petitioners.
Mr. P D Pise for the Respondent No.1.

CORAM : R. M. SAVANT, J.
DATE : 31st August 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 17/01/2015 passed by the learned Ad-hoc District Judge-3, Sangli by which order the Appeal filed by the Respondent No.1 herein i.e. the original Plaintiff came to be allowed and resultantly the order dated 24/03/2014 passed by the Trial Court refusing to grant injunction against the Petitioners herein i.e. the Defendant Nos. 5 to 12 came to be set aside and injunction by way of restraining the Defendant Nos. 5 to 12 from creating third party rights has been granted. Hence by the order passed by the Appellate Court the Application (Exhibit 5) has been allowed in its totality.

2 The Respondent No.1 herein is the original Plaintiff who has filed the suit in question for declaration and for partition. The declaration sought is that the Plaintiff has 1/4th share in the suit property which is mentioned in the

plaint. The Defendant Nos.1 to 4 are the father, mother and two brothers of the Plaintiff. The Plaintiff has got on 20/12/1988. It is thereafter that the instant suit has been filed for the reliefs claimed. In the said suit an application for temporary injunction came to be filed by the Plaintiff. The injunction sought was to restrain the Defendant Nos. 1 to 12 from dealing with the property in the matter of creating third party rights in respect of the same.

3 The said application was replied to by the Defendant Nos.1 to 4. The Defendant Nos. 5 to 12 have adopted the written statement of the Defendant Nos. 1 to 4 as a reply to the application. In so far as Defendant Nos. 1 to 4 are concerned, it seems that they questioned the right of the Plaintiff to claim the share in the property. The said right was questioned on the ground that the Plaintiff was married in the year 1988 and the amendment to the Hindu Succession Act has come about in the year 2005. As indicated above the Defendant Nos. 5 to 12 did not file any independent reply to the application for temporary injunction but adopted the reply of the Defendant Nos. 1 to 4.

4 The Trial Court considered the said application for temporary injunction. The Trial Court, in so far as the Defendant Nos. 1 to 4 are concerned, granted injunction against them restraining them from alienating the balance remaining lands having regard to the lands already sold vide various sale deeds. The Trial Court was of the view that the Plaintiff's interest

can be protected out of the lands remaining if ultimately the Plaintiff succeeds in the suit and is held entitled to a share in the lands in question. The Trial Court held that since the Defendant Nos.5 to 12 have purchased the lands in question by various sale deeds which have been executed from time to time, if the injunction is granted, then the Defendant Nos. 5 to 12 would be prejudiced and therefore the Trial Court refused to grant injunction against the Defendant Nos. 5 to 12. As indicated above the Trial Court by its order dated 24/3/2014 partly allowed the Application (Exhibit 5) for injunction filed by the Plaintiff.

5 The Plaintiff aggrieved by the said order dated 24/03/2014 passed by the Trial Court challenged the same by way of Misc. Civil Appeal No.76/2014. The Lower Appellate Court has allowed the same by the impugned order dated 17/01/2015 and as indicated above has also enjoined the Defendant Nos.5 to 12 from creating third party rights. The gist of the reasoning of the Lower Appellate Court is that though the parts of the property have been sold to the Defendant Nos. 5 to 12, the exact details have not been given by the Defendant Nos.1 to 4 or the Defendant Nos. 5 to 12. The Lower Appellate Court took into consideration Section 6 of the Hindu Succession Act which has come into force in the year 2005 and having regard to the Full Bench Judgment of this Court reported in 2014(5) Mah. L.J. 434 in the matter of Badrinarayan Shankar Bhandari and others vs. Omprakash Shankar Bhandari held that the Plaintiff being alive on the day when the

Hindu Succession Act has been amended would be a coparcener and would therefore be entitled to a share in the property in question. The Lower Appellate Court also questioned the ground of legal necessity sought to be put up by the Defendant Nos. 1 to 4 and observed that Karta of the joint family cannot sell the property for no good reason. The Lower Appellate Court held that the Trial Court has erred in observing that the alienation made in favour of the Defendant Nos. 5 to 12 does not affect the share of the Plaintiff. This the Lower Appellate Court found fault with on the basis that since the property is not partitioned it cannot be said as to which share in the lands would go to whom and therefore the ground of the Defendant Nos. 5 to 12 being bonafide purchasers for value would not be accepted. The Lower Appellate Court held that the Plaintiff being a coparcener, it would have to be decided at the hearing of the suit as to which share in the lands would go to which coparcener. The Lower Appellate Court has as indicated above accordingly set aside the order passed by the Trial Court and in turn has also granted injunction against the Defendant Nos. 5 to 12.

6 The learned counsel appearing for the Petitioners i.e. Defendant Nos. 5 to 12 Shri Desai would contend that in the absence of the relief sought by way of setting aside of the sale deeds in favour of the Defendant Nos. 5 to 12, the Lower Appellate Court has erred in granting injunction against the said Defendants. The learned counsel would contend that the Defendant Nos. 5 to

12, by the registered sale deeds right from the year 1995, have alienated the parts of the property sold by the Defendant Nos. 1 to 4 and therefore the Lower Appellate Court ought not to have granted injunction against the Defendant Nos. 5 to 12. In support of the said contention the learned counsel for the Petitioners sought to place reliance on the unreported judgment dated 30/06/2011 of the Madras High Court in Second Appeal (MD) No.148 of 2011 and Miscellaneous Petition No.2 of 2011 in the matter of Vedambal v/s. Ponnarasi and anr.

7 In my view, it is not possible to accept any of the contentions urged by the learned counsel for the Petitioners. In terms of the provisions of the Hindu Succession Act which has come into force in the year 2005, there can be no dispute about the fact that the Respondent No.1 original Plaintiff is a coparcener and would therefore be entitled to a share in the joint family property. The Trial Court as indicated above has on the basis that the Plaintiff's interest can be protected out of the lands which are remaining had refused to grant injunction against the Defendant Nos. 5 to 12. In the said context it is required to be noted that the Defendant Nos. 5 to 12 are undisputedly the parties who have purchased the undivided share in the joint family property. The Lower Appellate Court was therefore right in observing that though it is the case of the Defendant Nos. 5 to 12 that they have purchased parts of the said property from the Defendant Nos. 1 to 4, the details of the parts which

have been purchased have not been mentioned. The Lower Appellate Court was also right in observing that which share in the lands would go to whom can ultimately be decided at the final hearing of the suit in question. It is also required to be noted that the Defendant Nos. 5 to 12 i.e. the Petitioners herein have not filed any reply to the Application for injunction and have therefore not placed on record the status of the property as on date, the application for temporary injunction was considered. What the Lower Appellate Court has done is, it has enjoined the Defendant Nos. 5 to 12 from dealing with the properties which have been sold to them by way of third party right. In my view, in the facts and circumstances of the present case, the order passed by the Lower Appellate Court cannot be said to be an order which could not have been passed in the said facts and circumstances. In my view, therefore, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]