

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11375 OF 2014**

1. Mr. Nitin Marutrao Kale and ..Petitioners
Ors

Vs

1. Hemant Sampatrao Magar .. Respondents
and Ors

Mr. A.V. Anturkar, Senior Advocate i/b Ms. Kalyani Tulankar,
Advocate for Petitioners.

Mr. J. Shekhar i/b J. Shekhar & Co, Advocates for Respondents
no.1 and 2.

Ms. Savita A. Prabhune, Advocate for Respondents no. 3 to 20.

CORAM : R.G.KETKAR,J.
DATE : 29/06/2015

PC:

1. Heard Mr. A.V.Anturkar, learned senior counsel for the petitioners, Mr. Shekhar Jagtap, learned counsel for respondents no.1 and 2 and Ms. Savita Prabhune, learned counsel for respondents no.3 to 20 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 21.10.2013 passed by the learned Civil Judge, Sr. Dn., Baramati below Exh.5 in Special Civil Suit No.83 of 2013, as also the Judgment and order dated 3.3.2014 passed by the learned District Judge-I, Baramati in Misc. Civil Appeal No.80 of 2013. By

these orders, the Courts below issued injunction restraining the petitioners from obstructing respondents 1 and 2's joint possession over 40 R land in Gat No.170, in all admeasuring 4 Hecter, situate at Village- Jalochi, Taluka- Baramati, District -Pune (for short, 'suit land').

3. Mr. Anturkar invited my attention to the prayers made in Special Civil Suit No.83 of 2013 instituted by respondents 1 and 2. By prayer clause (a), respondents no.1 and 2 have sought decree of partition and separate possession of their share. By prayer clause (b), the plaintiffs have claimed declaration that Agreement of Sale dated 12.4.2013 executed by defendants no.4 to 21 in favour of defendant no.1 is not binding on the share of the plaintiffs. Mr. Anturkar states that the petitioners are agreeable for passing decree in terms of prayers clause (a) and (b). He states that within one week from today, the petitioners will take out application under Order XII, Rule 6 of C.P.C. for passing decree in terms of prayers clause (a) and (b).

4. Mr. Anturkar further states that N.A. permission obtained by the petitioners will not bind/ be applicable to 40 R land claimed by respondents no.1 and 2 and for which they have instituted suit. He further states that mortgage deed which is executed by the petitioners will not bind/cover 40 R land of respondents no.1 and 2 which is to be demarcated after partition decree is passed.

Mr. Anturkar further states that the third party rights, if any, created by the petitioners will not also bind 40 R's land which is to be partitioned and demarcated in favour of respondents no.1 and 2. He further submits that if the learned trial Judge is directed to dispose of that application in a time bound manner, the petitioners will not press this Petition. Statements made by Mr Anturkar are accepted.

5. In view thereof, the Petition is disposed of as not pressed, with liberty to the petitioners to take out application under Order XII, Rule 6 of C.P.C. If such application is taken out, the learned trial Judge is requested to dispose of the same within 4 months from the date of application.

6. It is made clear that after passing of the decree, the learned trial Judge will forward the papers to Collector under Section 54 read with Order XX, Rule 18 of C.P.C. and after demarcating 40 R unencumbered land of respondents no.1 and 2, prayer clause(c) shall stand merged/dissolved.

7. It is also made clear that I have not examined merits of the proposed application. All contentions of the parties are expressly kept open. Order accordingly.

(R.G.KETKAR, J.)