

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5728 OF 2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr.S.M.Sabrad for the petitioner

CORAM : K. K. TATED, J.

DATE : JULY 11, 2016

P.C.:

1 Heard the learned counsel for the petitioner.

2 By this petition under Article 227 of the Constitution of India the Petitioner defendant challenges the order dated 11.3.2015 passed by Ad-hoc District Judge-1, Nashik in Civil Misc. Appeal No.46 of 2011 restraining defendants from creating any third party right, title and interest in respect of the suit property till the hearing and final disposal of the Suit.

3 In the present proceeding, respondent plaintiff filed Regular Civil Suit No.5 of 2012 in the court of Civil Judge, Junior Division, Dindori for partition of HUF property and separate possession.

In that suit, plaintiffs preferred application below Exhibit-5 for order of injunction restraining defendants from creating any third party right, title and interest in respect of the suit property. That application was rejected by the Trial Court on 12.2.2013. Thereafter, plaintiff preferred Civil Misc.Appeal No.46 of 2013. In that the appellate court passed impugned order dated 11.3.2015. Hence, the present Writ Petition.

4 The learned counsel for the defendant submits that the appellate court failed to consider the fact that plaintiffs are not entitled any share in the HUF property on the basis of Apex Court Judgment in the matter of ***Bharatha Mata and another vs. R. Vijaya Ranganathan and others, AIR 2010 (SC) 2685*** in which the Apex Court held that the children born out of void or voidable marriage is not entitled to claim inheritance in the ancestral properties, but entitled to claim share in self acquired property, if any. He submits that before the appellate court they pointed out that the issue about the right of illegitimate child is referred to larger bench. The appellate court passed impugned order and restrained the defendants from creating third party right, title and interest in respect of the suit property and same is required to be set aside.

5 I have heard the learned counsel for the defendant at length. It is to be noted that in the present proceeding plaintiff filed Suit for partition and their separate possession. If during the pendency of the suit, defendant creates third party right, title and interest then nothing will survive in the suit. Considering these facts, I do not find any reason to interfere with the well reasoned order dated 11.3.2015 passed by Appellate Court. Hence, following order is passed:

- a) Writ Petition stands rejected.
- b) No order as to costs.
- c) Hearing of Regular Civil Suit No.5 of 2012 is expedited.

JUDGE