

Anand

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

WRIT PETITION NO.1979 OF 2017

Shankar Nivrutti Phad

.Petitioner

Vs.

Harish Shankar Phad & ors.

.Respondents

Mr.S.K.Shinde i/b. Ms Sneha G. Sanap, Advocate, for the Petitioner

CORAM : R.G.KETKAR, J.

DATE : 09.03.2017

P.C.

. Heard Mr. Shinde, learned counsel for the Petitioner.

2. By this Petition under Article 227 of the constitution of India, the Petitioner, hereinafter referred to as 'Defendant No.1' has challenged the Judgment and Order dated 03.01.2017 passed by the learned Civil Judge (S. D.), Niphad, District-Nasik below Exh.29 in R.C.S.No.343 of 2012. By that order, the learned trial Judge allowed the Application made by Respondents 1 and 2, hereinafter referred to as 'Plaintiffs' under Order VI, Rule 17 r/w. Order I, Rule 10 of the Code of Civil Procedure (For short "CPC").

3. Mr. Shinde submitted that the Plaintiffs instituted suit for partition and separate possession against the Defendant No.1, hereinafter referred to as 'Petitioner' and Defendant No.3 Kalpana Arun Kale claiming partition and separate possession of the following properties.

GAT NUMBERS	AREA H. Acre
454	1.47
616	0.11
620	0.11
618	0.08

He submitted that Survey Nos.67/11+12/68/1+68/2 is the property of the Defendant No.1's wife. The Plaintiffs committed trespass in that property. Defendant No.1's wife, therefore, filed a complaint against them and thereafter, wife instituted R.C.S.No.106 of 2015. During the pendency of this suit, Defendant No.1's wife filed Application Exh.5 for injunction restraining the Plaintiffs from causing any disturbance to her possession. Opposing the Application filed by the Defendant No.1's wife, the Plaintiff contended that the suit property was purchased from the retiral benefits of their mother, Prema. The learned trial Judge disbelieved their case on the ground that except the bare words, there is no material on record to show that the suit property was purchased from

the service fund of their deceased mother, Prema. He submitted that it cannot be said that the said property was purchased from the income of the joint family.

4. He submitted that by the proposed amendment, the Plaintiffs have sought impleadment of Defendant No.1's married daughter and proposed purchasers as Defendant Nos.4 & 5. The Plaintiffs have also sought impleadment of Defendant No.1's wife. He submitted that in any case, the Plaintiffs are not justified in including the properties of married daughter of Defendant No.1 as also impleading her and prospective purchasers. He submitted that the impugned Order deserves to be quashed & set aside.

5. I have considered rival submission advanced by Mr. Shinde. I have also perused the material on record. As noted earlier, the Plaintiffs have instituted the suit for partition and separate possession. During the pendency of the suit, they have filed an Application Exh.29 under Order VI, Rule 17 r/w. Order I, Rule 10 of the CPC for impleadment of the parties as also for including certain properties on the ground that there are also ancestral properties. It is not in dispute that the trial is yet to commence. Having regard to the fact that the suit is for

partition, I do not find that the learned trial Judge has committed any error in allowing the Application. For the reasons set out in paragraphs No.6 & 7 of the impugned Order, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, the Petition fails and is dismissed. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proceedings as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)