

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

WRIT PETITION NO.4065 OF 2017

Jambrabai Laxman Tambe & ors. ... Petitioners

Vs.

Shri Balasaheb Vishnu Tambe & Ors. ... Respondents

Mr.R.A. Thorat, Senior Advocate i/b S.A. Sawant for the Petitioners
Mr.Abhijit Kulkarni i/b T.D. Deshmukh for Resp. No.1

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 28, 2017**

P.C. :

1. The petition is directed against the order dated 20.3.2017 passed by the learned District Judge, Khed Rajgurunagar, Pune, thereby granting temporary injunction to the plaintiff and directing the defendant Nos.3 to 6 i.e., the present petitioners not to create any third party interest in the suit property described in paragraph 1(b) of the plaint.

2. The petitioners are the defendant Nos.6 to 8. Respondent No.1, the original plaintiff, has filed the suit for partition and injunction. The plaintiff claims his 1/4th share in the entire suit property on the ground that the property is ancestral property and

no partition has taken place till today. The petitioners specifically dispute the fact of inherited property qua the property 1(b) and claims that it is a self acquired property. Thus, the claim of the plaintiff is restricted to 1/4th share in all the properties for the purpose of interim relief.

3. Mr.Thorat, the learned Senior Counsel appearing for the petitioner, submits that the order passed by the trial Court rejecting the application for temporary injunction below exhibit 5, is correct and the order of the learned District Judge setting aside the said order is illegal and hence, it is challenged in this petition. He submitted that the learned District Judge did not take into account the documents which were filed below exhibit 56. Nearly 22 documents produced by the petitioners under the list marked at exhibit 56 ought to have been looked into and discussed by the learned District Judge. He pointed out and relied on the observations made by this Court in its order dated 20.2.2017 in Writ Petition No.5908 of 2014 wherein the earlier order dated 15.5.2014 of the learned District Judge granting interim relief in favour of the plaintiff was set aside and the matter was remanded. He argued that this Court in the said order has held that *prima*

facie case is made out by defendant Nos.3 to 6 in their reply to exhibit 5 as also the findings to that effect recorded by the learned Judge from paragraphs 11 to 16 are correct. As the learned District Judge has not considered these aspects, the impugned order cannot sustain and as such, is liable to be set aside.

4. The learned Senior Counsel has pointed out the relevant documents in the compilation of documents at exhibit 56 and argued that though a joint family was in existence; Laxman, the deceased father of the petitioners, was working in one company in Mumbai in the year 1977 and out of his own income, he purchased trucks and he was very much in the business of transportation and supply of sand. He earned money and thereafter, purchased the disputed land which stands exclusively in the name of Laxman. The learned District Judge ought to have considered the documents, especially when such observation was made by the High Court in its order remanding the matter. He further argued that the District Judge has gone completely wrong in ignoring the factual aspect that the disputed property is a self acquired property and was not purchased out of a nucleus of the joint family.

5. Heard the learned Counsel for the respondent/plaintiff. He relied on the affidavit of the plaintiff where he has stated that Laxman was an agriculturist. He has worked 4 to 5 years prior to 1977 as a Driver in a company at Mumbai. Neither he has stated nor produced any proof of his salary for the years 1970 to 1977 but he has purchased the trucks and started business only by using the income from the nucleus of the joint Hindu family. He has further submitted that huge land i.e., property in para 1b admeasuring around 29 acres was purchased in the name of the elder son of the family i.e., Laxman from the nucleus of the joint property only, to meet the bar under the Urban Land (Ceiling) Act and also to save the property from acquisition. He also relied on the affidavits of third persons especially affidavit of S.D. Wagh, the real brother of petitioner No.1, who has stated that the property 1b is purchased out of joint family property and all family members have undivided right till today.

6. Heard the submissions. Perused all the orders relied on by the learned Counsel for both the sides. Perused the compilation of the documents produced by the petitioners. These documents are in respect of registration of the trucks, payment of taxes to the

Mumbai Municipal Corporation for transportation of sand, etc. So, all these documents *prima facie* disclose that Laxman Tambe was in the business of transporting the sand. However, considering the case of both the parties, *prima facie*, there should be some acceptable evidence to show that Laxman had sufficient income to purchase trucks out of his salary in the year 1977. It was necessary for Laxman to produce his salary slip to show his monthly independent income. However, not a single salary receipt or any evidence in respect of his salary was produced. So, it is difficult to accept that in the year 1977 Laxman had savings out of 3 to 4 years of service to buy a truck. Per contra, the affidavits of the plaintiff and the other person disclose that Laxman was residing in a tenanted premises at the relevant time and he used to spend his entire salary for his livelihood. As per the observation made by this Court in the earlier Writ Petition No.2012 of 2017, the learned District Judge in para 6 and especially 7 has taken into account the submissions in respect of the business of sand and the income out of it. Though Laxman had started business of supplying sand at the same time, it cannot be ignored that at that time also, the nucleus of joint family was in existence. The learned District Judge has rightly reasoned that once it is an admitted fact

that in the year 1977 – 1978, there was nucleus of joint family, then, if any purchase or any asset created, though in the individual's name, that person is required to show that it is out of his self-acquired income which is an independent source than the nucleus.

7. Under such circumstances, the order passed by the learned District judge cannot be faulted with. Hence, the petition is dismissed.

8. At this stage, the learned Senior Counsel for the petitioners prays for stay of this order for four weeks as the petitioners want to challenge the order before the hon'ble Supreme Court. The Respondent No.1 has opposed the oral prayer for stay. However, considering that this Court had earlier passed an order of maintaining status quo, the same shall continue for a period of four weeks from today i.e., till 31st July, 2017.

9. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)