

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

WRIT PETITION NO.10588 OF 2015

M/s.Shiv Associates

... Petitioner

Vs.

Suman Rajendra Tiwari & Ors.

... Respondents

Mr.N.V. Bhutekar with Vijay Dighe for the Petitioner

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 22, 2017**

P.C. :

1. This Writ Petition is directed against the order dated 25.8.2011 passed by the learned Civil Judge, Junior Division, Pimpri, below exhibit 60 in R.C.S. No.186 of 1997. The suit was filed by the plaintiff/petitioner for simpliciter injunction in the said suit. While filing the written statement, the defendants had raised an objection under section 47 of the Civil Procedure Code that the suit property was already the subject matter of the other properties and all issues are to be decided by the Executing Court as execution proceedings are pending. The trial Court has, therefore, framed issue on the point of maintainability. The application made by the plaintiff under Order 14 Rule 5(2) of the CPC to strike out

this issue, which was settled, was rejected and hence, this petition is filed.

2. The learned Counsel for the Petitioner has submitted that the suit is filed for simpliciter injunction and there is no question of maintainability involved. He has submitted that in the written statement, this point was raised. However, while settling the issue, it is not clear on whom the burden lies. He submitted that the order passed by the learned trial Court is erroneous and, therefore, it is to be set aside.

3. Perused the order as also the written statement, especially paragraphs 3, 4 and 5 of the written statement, where the issue of maintainability is raised by the defendants. With a view to adjudicate the matter fully, the said issue of maintainability is framed by the trial Court though it is a suit for injunction. The order passed by the learned trial Judge is well reasoned and cannot be faulted with. Hence, the petition is dismissed.

(MRIDULA BHATKAR, J.)