

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10587 OF 2016

Shri. Balkrishna Raghunath Vaidya ...Petitioner
Versus
Raghunath Mahadu Vaidya
And Ors ...Respondents

....
Mr.T.D. Deshmukh, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 13th FEBRUARY, 2017

P.C.

1. Heard Mr.T.D. Deshmukh, learned Counsel for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 3.5.2014 below Exhibit-5 in R.C.S. No.7/2014 passed by the learned Civil Judge, Junior Division, Ghodegaon as also judgment and order dated 30.4.2014 passed by the learned Ad-hoc District Judge-1, Khed-Rajgurunagar in Misc. Civil Appeal No.126/2014. By these orders, the Courts below dismissed the application Exhibit-5 taken out by the petitioner, hereinafter referred to as the 'plaintiff' for injunction restraining defendants

No.1, 3, 6 and 7 from creating third party interest in respect of the properties described in para-1 of the plaint.

3. In support of this Petition, Mr. Deshmukh submitted that defendants No.1 and 2 are the parents of the plaintiff and defendants No.3 to 5. Defendant No.6 is the wife of defendant No.3. He submitted that Gat No.195 admeausring 2 H 26 Rs inclusive of 4 R potkharaba is the ancestral property. Defendant No.3 is the Karta of the joint family. The properties are purchased in the name of defendant No.3 as Karta of joint family. He also heavily relied upon the application made by defendant No.3 to Shri Bhairavnath Nagari Sahakari Patsanstha Ltd. for obtaining loan for purchasing truck in the name of his father defendant No.1 Raghunath Vaidya. He submitted that defendant No.3 admitted that he is residing in house No.725 which is situate in Gat No.187. All these aspects show that the suit properties are joint family properties. The Courts below however rejected the application on the ground that *prima facie* the plaintiff has not established that the suit properties are joint family properties of the plaintiff and the defendants. He submitted that the learned District Judge committed error in observing in paragraph-14 that defendant No.3 being Karta

cannot be restrained from creating third party interest. He submitted that the said statement of law is contrary to the settled principles Hindu law.

4. I have considered the submissions advanced by Mr. Deshmukh. I have also perused the material on record. As noted earlier, the plaintiff has claimed that the properties purchased in the name of defendant No.3 are purchased in his capacity as a Karta of the joint family. In paragraph-10, the learned trial Judge has observed that *prima facie* there is no material on record to show that the suit properties are joint family properties of the parties. In paragraph-11, the learned District Judge considered the sale deeds placed on record. In pursuance of these sale deeds, mutation entries were also made. The learned District Judge observed that the recitals in the sale deeds do not mention that the properties were purchased by defendant No.3 as Manager of joint family. It was further observed that *prima facie* there is nothing on record to show that the properties are purchased out of income of the joint family.

5. In paragraph-14, the learned District Judge observed

that the injunction cannot be issued against Karta of the joint family thereby restraining him from alienating the property. This observation has to be understood in the context of the power to sell the joint family properties in case of legal necessities.

6. For the reasons recorded by the Courts below and in particular District Court in paragraph-11, I do not find that any case is made out for invocation of power under Article 227 of the Constitution of India. Though Gat No.195 is ancestral property, the Courts below have considered this aspect and have rejected the application for injunction. Hence, the Petition fails and the same is dismissed.

7. Liberty is reserved to the plaintiff to file application for disposal of the suit in a time bound manner. If such an application is made, the learned trial Judge will pass appropriate order. Order accordingly.

(R. G. KETKAR, J.)