

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION No. 10528 OF 2016**

Bhikabai Maruti Daiangade ... Petitioner  
Vs.  
Shobha Hambirrao Jadhav & Ors. ... Respondents

Mr. Mahindra B. Deshmukh, Advocate for the petitioner.

Mr. N.N. Pawar, Advocate for respondent no.1.

Ms. Vrushali Penkaz i/b. Mr. Bhushan Walimbe, Advocate for respondent no. 5.

**CORAM: MRS.MRIDULA BHATKAR, J.**

**DATE: 27<sup>th</sup> June, 2017.**

**P.C.:**

Rule. Rule made returnable forthwith. By consent, Writ Petition is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order dated 31<sup>st</sup> October, 2015 passed by the learned District Judge, Islampur in Miscellaneous Civil Appeal No. 42 of 2013.

3. The petitioner is the original plaintiff, who has filed the suit for partition against her co-sharers. Respondent no.1, who is purchaser of 8 anna share in the ancestral property from one Rama Ragu Mhaske and Bhiru Bapu Mhaske. The petitioner/original plaintiff is a

daughter of deceased Dhondi Chandru Mhaske, original owner of the property and niece of Rama Ragu Mhaske and Bhiru Bapu Mhaske. It is claimed that she has 4 anna share in the total ancestral property on the southern side.

4. It is contended by the learned counsel for the petitioner that her uncles Rama Mhaske and Bhiru Mhaske have sold their 8 anna shares to some other persons and respondent no.1. By doing so, the undivided share of the petitioner/plaintiff is also affected and therefore, she filed the suit for partition and prayed for temporary injunction that her possession should not be disturbed and she should not be obstructed by the defendants. The trial Court has granted injunction by order dated 28<sup>th</sup> May, 2013, however, the said order was partly set aside in Appeal.

5. The learned counsel for the respondent no. 1 has submitted that the respondent no. 1 is in possession of the land, which is sold to her since 2008 and till then, no objection was raised by the petitioner. He supported the order passed by the learned District Judge, Islampur.

6. I have perused both the orders. The petitioner has filed the suit for partition and, therefore, she has made respondent no.1, who is the purchaser of the major share of the land, as party-defendant. Considering the reasons given by the learned trial Judge, it appears that *prima facie* case was made out by the petitioner/plaintiff. The learned District Judge in the order has directed to maintain status quo in the 7/12 extract and not to obstruct each others possession. However, the petitioner has filed the suit for partition and she has 4 anna undivided share in the suit property, therefore, she is on a stronger footing. The balance of convenience lies in her favour. Hence, the order of the trial Court is maintained and the order passed by the learned District Judge is set aside.

7. Rule is made absolute in above terms.

8. The trial Court to expedite the suit and parties to cooperate.

**(MRIDULA BHATKAR, J.)**