

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

WRIT PETITION NO. 3174 OF 2016

Shailesh Shantaram Pikale & Anr.	...	Petitioners
V/s.		
The State of Maharashtra & Ors.	...	Respondents

Mr.Manish N. Gala for the Petitioners.

Mr.V.B. Konde-Deshmukh, A.P.P. for the State.

Mr.Rajendra Shirodkar i/b. Mr.Ayaz Khan for Respondent No.3.

**CORAM : RANJIT MORE &
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 2nd NOVEMBER, 2017.

P.C. :

1] Heard Mr.Gala, learned counsel for the Petitioners, Mr.Konde-Deshmukh, learned A.P.P. for Respondent No.1 & 2-State and Mr.Shirodkar, learned counsel for Respondent No.3.

2] This petition is filed for quashing and setting aside the First Information Report (FIR) bearing C.R. No.10 of 2016 of the Economic Offenses Wing and FIR No.88 of 2016 registered by Mahim Police Station, Mumbai at the instance of Respondent No.3 for the

offence punishable under Section 420, 465, 467, 468, 471 and 120(B) read with Section 34 of the Indian Penal Code.

3] Learned counsel for the Petitioners invited our attention to copy of FIR at Exhibit "A" and the alleged last Will of father of Petitioner No.1 and Respondent No.3 at Exhibit "B" of the compilation.

4] Learned counsel submits that the father of the Petitioner No.1 and Respondent No.3 is expired on 4th March, 2013 and before his death he executed Will-deed dated 3rd June, 2011. He submits that the Respondent No.2 could pursued the Police to register the offence on the basis of the statement in paragraph (10) of the Will. Learned counsel submits that in this paragraph the reference is of partition deed of the year 1992. Respondent No.2 wrongly represented to the Police that reference to the partition deed in the Will is of partition deed dated 30th December, 2011.

5] We have gone through both the partition deeds i.e. for the year 1992 as well as 2011. So far as the partition deed for the year 1992 is concerned, it is between three co-owners, namely, Mrs.Aruna Dattakumar Sawant, Umakant Chintaman Chougale & Amit Umakant Chougale, Shantaram Venkatrao Pikale (Petitioner No.1 and

Respondent No.3's father). By this Partition-deed only Chougale got separated his share of the land in question and rest of the land was kept joint between Petitioner No.1 and Respondent No.3's father and Mrs.Sawant's descendants. Therefore, the father of the Petitioner No.1 and Respondent No.3 did not become absolute owner of specific area of land i.e. 7 Acre 33-R. by this partition-deed. The reference of the absolute ownership of Petitioner No.1 and Respondent No.3's father and specification of share to the extent of 7 Acre 33-R is found only in subsequent partition-deed dated 30th December, 2011.

6] Therefore, we are of the *prima-facie* opinion that the reference made in paragraph (10) of the Will-deed is to the partition-deed dated 30th December, 2011. If the Will-deed is executed on 3rd June, 2011, then it is strange that how come the reference to the partition-deed dated 30th December, 2011 was made therein.

7] We are therefore, at this stage, not inclined to interfere in this petition, as much as, in the event, Charge-sheet is filed, the Petitioner is always at liberty to file discharge application before the trial Court.

8] We do not found merit in the petition, therefore, petition dismissed.

9] It is expressly made clear that the observations made here-in-above are in support of this order and the trial Court shall not be influenced by the said observations in deciding the lis between the parties at later stage.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]