

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

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WRIT PETITION NO. 1986 OF 2015

**JANUNABAI BABULAL SHARMA AND OTHERS
VERSUS
SANJAY CHANDRAKANT SIDANKAR AND OTHERS**

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Advocate for Petitioners : Mr. A. K. Gawali
Advocate for Respondent no.1 : Mrs. Anjali Dube
Advocate for Respondents no.12 to 15 : Mr. D. B. Rode

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**CORAM : V. K. JADHAV, J.
DATED : 21st MARCH, 2018**

PER COURT:-

1. The petitioners are the original defendants. Respondent no.1 and respondents no.12 to 15 herein/original plaintiffs have instituted Spl.C.S. no. 18 of 2010 for partition and separate possession in respect of the suit property. The respondents/plaintiffs have also filed application Exh.50 for issuance of an order of injunction against the present petitioners preventing them from creating any third party interest in the suit property and also from carrying out any construction over the suit property. The learned Civil Judge Senior Division, Shrigonda by order dated 02.07.2013 below Exh.50 rejected the said application. Being aggrieved by the same, respondent no.1/original plaintiff no.1 alone has preferred MCA no.149 of

2014 before the District Court, Ahmednagar and by order dated 10.12.2014 the learned Adhoc District Judge-3, Ahmednagar allowed the said appeal with costs, quashed and set aside the order passed by the trial court and by allowing application Exh.50 restrained the present petitioners from creating third party interest in the suit properties and raising any sort of construction on the suit properties till the disposal of the suit. Aggrieved by the same, the petitioners approached to this court by filing the present writ petition.

2. It appears from the pleadings of the parties that certain immovable properties were owned and possessed by one Baburao Sidankar. He had four sons. After his death, it was agreed amongst the legal heirs of deceased Baburao Sidankar to sell out the said land, which are the subject matter of the Spl.C.S. No. 18 of 2010, in favour of one Babulal Sharma. Accordingly, agreement to sell was executed, wherein the father of the respondent/plaintiff no.1 Chandrakant was also a party. Thereafter, in the year 1987 Regular Civil Suit no.142 of 1987 came to be instituted by the legal heirs of deceased Baburao Sidankar for partition and separate possession of the joint

properties excluding the immovable property, which is the subject matter of Spl.C.S. no.18 of 2010. During the pendency of the said RCS no.142 of 1987, in furtherance of the said agreement of sale, the registered sale deed came to be executed in respect of the said property by the legal heirs of deceased Baburao Sidankar in favour of Babulal Sharma by accepting the remaining consideration. However, the father of present respondent/plaintiff no.1 was not the party to the said sale deed. In the year 1998 the father of the respondent /plaintiff no.1 had challenged the judgment and decree passed in RCS no. 142 of 1987 by filing Regular Civil Appeal no. 209 of 1998. However, the said appeal was dismissed. Thus, the judgment and decree passed in RCS no. 142 of 1987 came to be confirmed by the first appellate court. Thereafter, the said Chandrakant Baburao Sidankar (father of respondent/plaintiff no.1) has preferred Second Appeal no.718 of 2008 through his power of attorney holder i.e. present respondent/plaintiff no.1 Sanjay Sidankar. By order dated 04.03.2009 this court has disposed of Second Appeal no.718 of 2008. This court while disposing of the Second Appeal no.718 of 2008 has recorded certain observations. This court while disposing of the Second Appeal no.718 of 2008 recorded

the statement of the counsel appearing on behalf of Chandrakant Sidankar to the effect that Chandrakant Sidankar would not be challenging the sale deed, but he has limited grievance of receiving his share in the remaining consideration paid by the purchaser Babulal Sharma. However, there is a controversy about the said statement made before this court. Counsel appearing for the respondent/original plaintiff submits that the first appellate court has granted liberty to the respondent/original plaintiffs to institute suit for partition, if required as against the property sold to Babulal Sharma when Chandrakant was not party to the said sale deed executed in favour of Babulal Sharma. On the other hand, learned counsel for the petitioners submits that the respondent/original plaintiffs bound by their statement made on their behalf by their counsel and recorded by this court while disposing of Second Appeal no.718 of 2008. However, it would be inappropriate to make any comment on the same, since the suit claiming substantial reliefs in respect of the same property between the parties is pending before the trial court.

3. On perusal of the plaint of Spl.C.S. no. 18 of 2010, it

appears that the said suit has been instituted for partition and separate possession in respect of eight immovable properties, which is the subject matter of the said sale deed executed by the other legal heirs of Baburao Sidankar in favour of Babulal Sharma excluding the present respondent/original plaintiffs. Though the respondent/original plaintiffs have claimed relief in respect of the house property in the same suit, the petitioners are not concerned with the said property. In the suit, the respondent/original plaintiffs have claimed their share in respect of aforesaid suit properties to the extent of 25/252. However, by impugned order dated 10.12.2014 the learned Adhoc District Judge-3, Ahmednagar has restrained the petitioners from creating third party interest in the entire suit properties and also raising any sort of construction on the suit properties till the disposal of the suit.

4. In stead of going in to the merits of the rival contentions of the counsel appearing for the parties, by consent of both the learned counsel, the impugned order passed by the Adhoc District Judge-3, Ahmednagar is hereby restricted to the extent of suit property bearing gat no.2422, admeasuring 39 R, situated

at Shrigonda, in stead of restraining the petitioners from creating third party interest in respect of the entire property and also from making construction over the entire suit properties. Learned counsel on specific instructions from their respective clients agree that the same would protect the interest of the parties for which they are litigating before the trial court.

5. Both the learned counsel requested this court to direct the trial court to expedite the hearing of the suit.

6. In view of the above, I proceed to pass the following order.

ORDER

- I) Writ petition is hereby partly allowed. No costs.
- II) The impugned order dated 10.12.2014 in Misc. Civil Appeal. no. 149 of 2014 passed by the Adhoc District Judge-3, Ahmednagar is hereby modified to the following effect :-
 - i) Defendants no.1, 2A to 2C, 3 and 7A, 8, 11 to 13 & 15 to 17 are hereby restrained from creating third party interest in respect of the suit property gat no.2422, admeasuring 39 R, situated at Shrigonda

and further the defendants as aforesaid are restrained from raising any sort of construction on the property as mentioned above, till the disposal of the suit.

- ii) Needless to say that application Exh.50 is partly allowed to that extent with modification as aforesaid.
- iii) The trial court shall dispose of the suit as expeditiously as possible preferably within a period of one year from today.
- iv) Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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