

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

20 WRIT PETITION NO. 4260 OF 2017

NARAYAN NANA BHOR
VERSUS
RAMDAS NANA BHOR AND ANOTHER

.....
Mrs. M. D. Thube-Mhase i/by Lex Aquila for the Petitioner.
Mr. S. S. Kotkar for Respondent No.1.
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CORAM : V. K. JADHAV, J.
DATED : 5th FEBRUARY, 2018

PER COURT:-

1. I find no substance in this Writ Petition.
2. The petitioner has instituted Regular Civil Suit No. 113 of 2012 for partition and separate possession in respect of the ancestral properties and the trial Court has decreed the said Suit by judgment and decree dated 18th November, 2014.
3. It is not disputed that the said decree has now attained finality. However, the petitioner has started making permanent construction work over part of the suit property which is already

in his possession and as such, the respondent-plaintiff was constrained to institute a Suit being Regular Civil Suit No.506 of 2016 for a decree of perpetual injunction against the present petitioner. The respondent has also filed an Application Exhibit 5 for issuance of the order of temporary injunction to restrain the present petitioner from continuing his construction over the suit portion. The said Application Exhibit 5 came to be allowed ex-parte by the trial Court and the Misc. Civil Appeal preferred by the petitioner came to be dismissed by the District Court.

4. Since the decree passed in Regular Civil Suit No. 113 of 2012 has attained finality, unless and until the partition is effected, the co-sharer cannot change the nature of the suit property by making a permanent construction over a portion of the ancestral land. The partition is required to be carried out in terms of the said decree passed in Regular Civil Suit No. 113 of 2012 by metes and bounds and as such, the petitioner-defendant cannot make construction over the portion, which is alleged to be in his possession, prior to the decree passed in the aforesaid Suit. The decree passed in Regular Civil Suit No.113 of 2012 also does not specify that the party could retain possession over the

portion of the ancestral land and the partition of land be carried out in accordance with the same.

5. The learned counsel for the petitioner submits that the petitioner has almost completed the construction over the portion of the ancestral land where already his mud-house is situated and the petitioner would not carry out any further construction but let the petitioner complete the said construction. The learned counsel submits that the petitioner would undertake as not to change the nature of the ancestral land which is the subject matter of the partition decree in any manner and the said constructed portion of the house would also subject to the partition decree to be executed.

6. It is well settled that unless and until the partition is effected, one co-sharer cannot change the nature of the suit property or make any permanent construction. There is no point in allowing the petitioner to complete the said construction and then to retain that property subject to the execution of the decree under partition.

7. I find no fault in the impugned order passed by the Courts below. There is no substance in the Writ Petition. The same is accordingly dismissed. No costs.

(V. K. JADHAV, J.)

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