

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

WRIT PETITION NO. 10336 OF 2014

SAHEBA YASHWANTA SHINDE
VERSUS
KISAN GANPAT SHINDE AND ANOTHER

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Advocate for the Petitioner : Shri Patil Milind M. (Beedkar).
Advocate for Respondents 1 and 2 : Shri Bhosale Mahesh S..

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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 09th January, 2018

Per Court:

1 While issuing notice on 01.12.2014, this Court had passed the following order:-

- "1. *The petitioner/ plaintiff has filed RCS No.53 of 2012. Defendant No.1 is nephew of the petitioner and defendant No.2 is the son of defendant No.1. The suit is for perpetual injunction.*
2. *The petitioner, by application Exhibit 55, sought to delete Gut No.196 from the proceedings on the ground that the son of the petitioner now has the possession of Gut No.196 and therefore, the petitioner does not desire to press for perpetual injunction against his own son. The said application has been rejected by the impugned order dated 18.09.2014 on the ground that nature of the suit would completely change if Gut No.196 is deleted.*
3. *Issues are yet to be cast in the proceeding.*
4. *Issue notice before admission to the respondents returnable on 07.01.2015.*
5. *Till the next date of hearing, the trial court shall not proceed to commence the recording of evidence in RCS No.53/2012."*

2 I have considered the submissions of the learned Advocates for the respective sides. With their assistance, I have gone through the petition paper book.

3 A serious grievance is voiced by the learned Advocate for the Respondents, who are defendants, that they were not arrayed as Defendants in RCS No.371/2013 and therefore, by the proposed amendment by which, the Plaintiff desires to abandon the particular claim, the doors of litigation would be closed to that extent so far as these Defendants are concerned.

4 It requires no debate that if a litigating side desires to abandon a particular claim, the other side will always be at liberty to point out to the Trial Court as regards the effect of such abandonment. In the instant case, the Defendants have already filed their Written Statement contending that they have a share in the property at issue since Defendant No.1 is the real brother of the father of the Petitioner, Yashwanta. Yashwanta was declared as protected tenant. After Yashwanta passed away, the Petitioner has stepped into his shoes. Respondent No.2 herein is the son of Respondent No.1.

5 The Trial Court has noted that the dispute between the parties with regard to the consolidation scheme has reached the Honourable Supreme Court and as such, Yashwanta was ultimately declared as owner of the suit land.

6 The suit preferred by the Petitioner herein is purely for seeking injunction and by deleting the land Gat No.196, the Petitioner does not desire to seek any injunction to the extent of the said land. If the Defendants in the suit are aggrieved by any decision flowing from RCS No.371/2013, they can avail of the remedies as may be permissible in law in the light of their grievance that it was a collusive suit and was decreed by the compromise in collusion as these Defendants were not arrayed in the said proceedings. That issue would always be left open as it is not an issue in RCS No.53/2012.

7 Considering the purpose for which RCS No.53/2012 has been filed, if the Plaintiff does not desire to seek an injunction with regard to Gat No.196, neither the Trial Court nor the Defendants can insist that the Plaintiff must press for injunction with regard to Gat No.196.

8 For the above reasons, this Writ Petition is allowed. The impugned order dated 18.09.2013 is quashed and set aside. The application Exhibit-55 is allowed.

9 Needless to state, insofar as the grievance of the Defendants with regard to RCS No.371/2013 is concerned, they would always be at liberty to take recourse to such remedies as may be usually available to them in law.