

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

35. WRIT PETITION NO. 12521 OF 2018

Mahadeo Daryappa Katgawe ... Petitioner
Versus
Narsing Daryappa Katgawe and others ... Respondents

Mr. R.K. Ashtekar, Advocate for petitioner

Coram : N.M. Jamdar, J.

Date : 19 November 2018.

ORAL ORDER:

1. By this petition, petitioner has challenged the order passed by the learned Joint Civil Judge (Senior Division), Omerga, in Civil Misc. Application requiring judicial inquiry No. 12 of 2018 dated 19 October 2018. The impugned order is passed in execution proceedings pursuant to a land acquisition reference. The respondents are beneficiaries of the award of which they are put to execution and when the amount is about to be disbursed, petitioner who is brother of the respondents, has moved an application restraining respondents from withdrawing amount. The learned Civil Judge has rejected the same on the ground that he is not herein proceeding under section 30 of the Land Acquisition Act and in the application he cannot decide rights of the petitioner, which will have to be decided in substantive

suit for partition which has been already filed. There is no error in the order passed by the learned Civil Judge.

2. Learned Counsel for the petitioner submitted that the suit for partition is filed by the petitioner. The learned Civil Judge has only issued notice to the respondents and has not granted any ad-interim protection. However, said order is not under challenge in this petition. Even otherwise, there is no specific rejection of any ad-interim relief and, if it is rejected, the petitioner has to pursue remedy of appeal as provided. It is open to the petitioner to move an application for ad-interim relief in pending suit i.e. Regular Civil suit No. 433 of 2018, which application will be considered on its own merits.

3. The petitioner is right in contending that mere issuance of notice without adjudicating whether petitioner is entitled to any ad-interim order, will not serve the purpose. Therefore, the learned Civil Judge will decide the application for ad-interim relief in Regular Civil Suit No. 433 of 2018 as early as possible and on its own merits.

4. Writ petition is accordingly disposed of.

N.M. Jamdar, J.