

WRIT PETITION No. 1172 OF 2017

Smt. Indubai Kakaso Dabade & Ors. ...Petitioners

Versus

Pandurang Dnyanu Shinde & Ors. ...Respondents

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Mr. Mahindra B. Deshmukh for the Petitioners.
Mr. Amol Suresh Suryawanshi for the Respondents.

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CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 13, 2018

P.C.:

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and decided at the stage of admission.
2. This Petition invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is filed wherein the order dated 17th August, 2016 passed by the learned District Judge-1, Vaduj thereby allowing Misc. Civil Appeal No. 29 of 2015 and setting aside the order dated 24th August, 2015 passed by the

learned Civil Judge, Junior Division, Vaduj below exhibit 5 in Regular Civil Suit No. 146 of 2015 is challenged.

3. The petitioners are the original plaintiff Nos. 1 to 3. Plaintiff No. 1 is a mother and plaintiff Nos. 2 and 3 are her married daughters. They have filed a suit for partition, declaration and injunction. The main contention was against defendant Nos. 1 and 5. Defendant Nos. 1 and 2 are the sons of plaintiff No.1. Defendant No. 5 i.e., respondent No.1 is the main contesting party in this Petition, as he had purchased 1 hector land from Gat No. 1580/1. It is the case of the plaintiffs that Gat No. 1580/1 is an ancestral property and the plaintiffs and the defendants have undivided share in the said property. Defendant Nos.1 and 2 i.e., respondent Nos. 2 and 5 by keeping the plaintiffs in dark had sold some portion i.e., 1 hector land of the ancestral property to defendant No. 5. Hence, the plaintiffs have moved an application below exhibit 5 for injunction. By order dated 24th August, 2015, the learned Judge of the trial Court has allowed the said application. Thereafter, defendant No. 5 i.e., respondent No.1 has filed a Misc. Civil Appeal No. 29 of 2015 challenging the order dated 24th August, 2015 passed by the learned Judge of the trial

Court. The learned Judge of the Appellate Court has allowed the Appeal and set aside the order of injunction granted by the trial Court. Hence, this Writ Petition.

4. The learned Counsel for the petitioners has relied on the genealogy of the family and pointed out that Dadu Dabade was the original person and Bhauso and Kakaso are his sons. After the death of their father i.e., Dadu Dabade, Bhauso and Kakaso became owners of the ancestral property. The partition of the ancestral property took place between Bhauso and Kakaso on 20th October, 2009. The name of Ankush i.e., defendant no.1 was mutated in Gat No. 1580/1 in the year 1975; however, he had no absolute right in other suit properties. There was no partition between the legal heirs of Kakaso and Bhauso. He has further submitted that the learned District Judge has misread the Deed of Relinquishment, Deed of Partition and other documentary evidence in favour of the appellant i.e., respondent No.1. He has further submitted that Kakaso family is the owner and is in possession of 2 hectores and 95.5 Ares land. Out of which, Ankush i.e., defendant No.1 has no right to sell 1 hector of land to defendant No.5 i.e., respondent No.1 and hence, the order dated

17th August, 2016 passed by the learned District Judge-1, Vaduj is to be set aside.

5. The learned Counsel for respondent No.1 has submitted that after going through the Deed of Relinquishment and Deed of Partition, respondent No.1 had purchased the said property for Rs. 3 lakhs from defendant No.1 – Ankush by a registered Sale Deed. He has further submitted that in the year 1975, the property was standing in the name of Ankush and, therefore, respondent No.1 is a bona fide purchaser of the said property. He has further submitted that the learned District Judge has considered this position and has accepted that defendant No. 1- Ankush was the owner of the property and earlier partition has taken place. The learned District Judge has rightly vacated the injunction granted by the trial Court.

6. Heard submissions. Considered pleadings. Perused both the orders passed by the Appellate Court and the trial Court. It is undisputed that the disputed land and the other properties are an ancestral property. It is also not disputed that the disputed land stood in the name of defendant No.1 Ankush in the year 1975.

However, it is also not disputed that there was no partition between Kakaso and Bhauso till 6th March, 2002. The partition of the ancestral property took place between Kakaso and Bhauso on 6th March, 2002. It is also not disputed that the suit bearing No. 318 of 1990 for partition between Kakaso and Bhauso was filed and it was compromised by consent terms dated 7th March, 2002. Thus, the family members of the branch of Kakaso are co-sharers and owners of the entire ancestral property fallen to the share of Kakaso. Plaintiff No.1 – Indubai is a widow of Kakaso. After the death of Kakaso on 20th October, 2009, who died intestate, his property was to be divided equally subject to rebuttal of this presumption. The land stood in the name of Ankush solely. He claimed his share in the ancestral property wherein all the family members having equal undivided share in the suit property. Under such circumstances, the learned District Judge has lost sight of the fact that there was partition between Kakaso and Bhauso. There was no subsequent partition between the legal heirs of Kakaso and, therefore, though Ankush had sold portion of 1 hector land, it appears *prima facie* that it is a part of the ancestral property where Indubai is having undivided share. Considering the total area, which is 2 hectores 95.5 Ares land and number of the

co-sharers, it cannot be said *prima facie* that defendant No. 1 – Ankush is entitled to claim 1 hector land.

7. Under such circumstances, the order dated 17th August, 2016 passed by the learned District Judge-1, Vaduj is hereby set aside and the order dated 24th August, 2015 passed by the learned Civil Judge, Junior Division, Vaduj below exhibit 5 in Regular Civil Suit No. 146 of 2015 is hereby restored. The learned Judge of the trial Court to expedite the matter, hear and conclude the suit on or before 31st January, 2019. Parties to co-operate the trial Court. Writ Petition is allowed. Rule made absolute in the above terms.

(MRIDULA BHATKAR, J.)