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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2394 OF 2018.

Anandrao Shankarrao Suryawanshi
and anr

... Petitioners

V/s.

Sou. Anandi Maruti Patil and ors

... Respondents

Mr. Prashant Bhavake, for the Petitioners.

Mr.Kedar P. Lad, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 3RD APRIL, 2018.

P.C. :

1] Heard learned counsel for the petitioners and respondents.

2] By this petition filed under Article 227 of the Constitution of India, the petitioners are challenging the order dated 2nd February, 2018, passed below Exh.50 in R.C.S. No.212 of 2014, by Civil Judge Senior Division, Kolhapur.

3] By the impugned order, trial Court has allowed the application filed by the original defendant No.2 seeking permission to sell plot No.6, out of plot Nos. 6, 7 and 8, which allegedly came to his share. The said permission was sought under Section 52 of the Transfer of Property Act, in order to repay a loan of Rs.8 lacs which

he has incurred towards the medical treatment of his wife, who died due to cancer.

4] Despite the said application being resisted by original defendant Nos. 1 and 3, who are the petitioners herein, the trial Court, has allowed it and permitted the defendant No.2 to sell the said plot subject to condition of informing the Court the name of the proposed purchaser and the total sale consideration, before the execution of the sale deed and also subject to condition that if the decree of partition is passed, defendant No.2 will not take objection to allow the said plot to his share.

5] However, it can be seen that the earlier application filed by plaintiff, for temporary injunction at Exh.5, restraining the defendants from creating third party interest in the said property was be allowed on 1st April, 2015. The appeal preferred against the said order bearing Misc. Appeal No.132 of 2015, came to be dismissed. Therefore, the order passed by the trial Court restraining defendants from creating third party interests in the suit plots has become final. In the face of such order, when that order is not set aside, it was not proper on the part of the trial Court to grant such permission to defendant No.2 to sell the suit plot, at the interim stage, when the suit for partition is still pending.

6] As regards the contention of learned counsel for the

respondents that in the written statement, which was filed jointly by defendant No.2 and the present petitioners, it was clearly mentioned that the said plot No.6 was allotted to their share. Therefore, according to him, no grievance should have been raised about the sale of the suit plot at least on the part of defendant No.1, who has also resisted the said request.

7] In my considered opinion as the properties are yet to be partitioned, every co-owner is having the right and joint possession over all the entire properties. In this case, on this very ground itself, the specific order of temporary injunction was passed restraining defendants from selling or creating third party rights in the said property. Now, merely because defendant No.2 is stating that the plot No.6 be allotted to his share in case decree is passed, cannot be a ground to grant such permission, because every co-sharer is having legal right in plot No.6. Allowing defendant No.2 to sell the said plot, is as good as denying the other co-owners from getting share in the said plot, which cannot be permitted in the suit for partition.

8] As regards the submission that the defendant No.2 has incurred medical expenses for the treatment of his wife and for education of his children. Learned counsel for the petitioners has pointed out that defendant No.2 is a government servant and therefore, entitled for medical reimbursement. Further he has also

produced on record the documents to show that defendant No.2 has thereafter purchased two vehicles. In view thereof, it was not proper on the part of trial Court to allow the said application. The impugned order passed by the trial Court, therefore, is not sustainable in law.

9] Hence, the Writ Petition is allowed.

10] The impugned order passed by the trial Court is quashed and set aside.

11] The application at Exh.50 filed by defendant No.2 stands dismissed.

12] The hearing of the suit is expedited. The trial Court is directed to decide the suit as expeditiously as possible and preferably within a period of six months from the date of receipt of this order.

13] The parties are directed to co-operate the trial Court in expeditious disposal of the suit.

[DR.SHALINI PHANSALKAR-JOSHI, J.]