

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

WRIT PETITION NO. 7748 OF 2017

Ankush Dattatraya Jagtap	...	Petitioner
V/s.		
Dattatraya Sadashiv Jagtap & Ors.	...	Respondents

- Mrs.Geeta Mulekar for the Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th APRIL, 2018.

P.C. :

- 1] Heard learned counsel for the Petitioner.
- 2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 22nd February 2017 passed by the Joint Civil Judge, Junior Division, Indapur, below the application at Exhibit-30 in Regular Civil Suit No.79 of 2016.
- 3] The application at Exhibit-30 was preferred by the present Petitioner, who is the Plaintiff before the trial Court, for a decree and judgment on admission contending *inter-alia* that the Petitioner has filed the suit for partition of the agricultural land claiming share in the

suit property against Respondent No.1, who is his father. In the written statement filed by Respondent No.1, he has admitted the Petitioner's share in the suit property and hence, it is submitted that this is a fit case where the decree on admission was required to be passed by the trial Court. However, as the trial Court has not done so, the impugned order passed by the trial Court is required to be quashed and set-aside.

4] Perusal of the plaint goes to show that in addition to the relief of partition, the Petitioner has specifically claimed that the sale-deed of the property executed by Defendant Nos.3 and 4 in favour of Defendant Nos.5 and 6 be declared as not binding on the share of the Petitioner.

5] It is undisputed fact that the suit property at present stands in the name of Respondent Nos.5 and 6 and therefore, as rightly observed by the trial Court, they are the real contesting parties and not the Defendant No.1, the father of the Petitioner.

6] In such situation, the real dispute involved is whether sale-deeds of the suit property executed by Defendant Nos.3 and 4 in favour of Defendant Nos.5 and 6 are binding on the share of the Petitioner or not and to that extent, there is no admission either on

the part of the Respondent Nos.3 and 4 or 5 and 6; therefore such judgment and decree on admission cannot be passed by the trial Court.

7] In view thereof, the trial Court has rightly rejected the said application. In writ jurisdiction, no interference is warranted therein.

8] Writ Petition therefore being without merit, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]