

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

WRIT PETITION NO. 8914 OF 2017

Rukmini Bharat Shinde	...	Petitioner
V/s.		
Smt.Sindhu Sampatrao Jagatap & Ors.	...	Respondents

- Mr.Ajay A. Joshi for the Petitioner.
- Mr.S.P. Dighe i/b. Mr.Vaibhav R. Gaikwad for Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th MARCH, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and learned counsel for the Respondent.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 28th April 2017 passed by the District Judge-1, Pandharpur, thereby dismissing Miscellaneous Civil Appeal No. 38 of 2016 which was preferred by the present Petitioner against the order dated 2nd May 2016 passed below Exhibit-5 in Regular Civil Suit No.40 of 2016 by the Jt. Civil Judge Junior Division, Pandharpur.

3] The Application at Exhibit-5 was filed by the Respondent Nos.1 & 2/Plaintiffs for interim injunction restraining the present Petitioner from causing obstruction to their possession in the suit land. According to the Respondents, they are in lawful possession of the suit land. Respondent No.1-Smt.Sindhu is the mother of Respondent No.2-Dhananjay and Respondent No.3-Jayvant. According to Respondent Nos.1 and 2, the suit property is the joint family property. It is yet not partitioned and despite that Respondent No.3-Jayvant has sold the suit property illegally and unauthorizedly to one Mahesh Dada Naikwadi by bogus and false sale-deed dated 4th September 2006. Thereafter, this Mahesh Dada Naikwadi has sold the same to Chandrakant Dnyaneshwar Salunkhe by similar such sale-deed on 11th October 2010 and then Chandrakant Dnyaneshwar Salunkhe has sold the same to Satish Audumbar Patil on 27th June 2013 and he has sold the same to the present Petitioner. However, all along possession of the suit property remained with Respondent Nos.1 to 3. But as on the basis of this sale-deed, Petitioner started causing obstruction to possession of Respondent Nos.1 and 2 over the suit property, they filed this suit and application for temporary injunction before the trial Court.

4] According to the Petitioner, however, on the basis of this

sale-deed, she is in lawful possession of the suit property and by filing this suit simpliciter for injunction, Respondent Nos.1 and 2 are restraining her in possession and cultivation of the suit land. It is urged by learned counsel for the Petitioner that, merely on the assumption that, the suit property is yet not partitioned or divided and it belongs to joint family, both the trial Court and the Appellate Court have allowed the application for interim injunction and hence, the impugned order passed by the Appellate Court cannot be sustained in law.

5] To substantiate this submission, learned counsel for the Petitioner has relied upon the Mutation Entry No.3120 to show that suit land was purchased by Respondent No.3-Jayvant from Shankar Yashwant Chavan in the year 1998. Thus, it is submitted that, the suit property was independent property of Respondent No.3-Jayvant. It was in his possession and cultivation. It is urged that, he has sold it. Hence, when the owner of the property is in possession, he cannot be restrained from cultivating the same; otherwise he will suffer irreparable loss and hardship. To substantiate this submission, the reliance is placed on the judgment of the Hon'ble Supreme Court in the case of *ECE Industries Limited V/s. S.P. Real Estate Developers Private Limited & Anr.*, (2009) 12 SCC 776, and *Kashi Math*

Samsthan & Anr. V/s. Shrimad Sudhindra Thirtha Swamy & Anr., (2010) 1 SCC 689.

6] Further, according to learned counsel for the Petitioner, there can be presumption in respect of joint family property, but property cannot be presumed to be joint family property merely because of existence of a joint family, as held by the Hon'ble Supreme Court in the case *D.S. Lakshmaiah & Anr. V/s. L. Balasubramanyam & Anr., (2003) 10 SCC 310*. Here in the case, it is submitted that, at this interim stage, neither the trial Court nor the Appellate Court can come to the conclusion that the suit property is a joint family property when Respondent No.3 himself has stated in the sale-deed executed in favour of Mahesh Naikwadi that it was owned by him and it is in his possession. According to learned counsel for the Petitioner, as both the judgments of the trial Court and the Appellate Court suffer from the perversity, in the sense that, they do not take into consideration either the legal position or the factual position in its proper perspective, impugned order passed by the trial Court and confirmed by the Appellate Court is liable to be quashed and set-aside.

7] However, even if, in the considered opinion of this Court, the relations between Respondent Nos.1, 2 and 3 are considered, then it is more than sufficient to support the impugned order passed by the

trial Court. It is pertinent to note that Respondent No.1-Smt.Sindhu is the mother of Respondent Nos.2 and 3. According to her, the suit property is a joint family property and at no time, it was partitioned by metes and bonds. Though, Respondent No.3-Jayvant, her son, contends that, it was owned by him; both the trial Court and Appellate Court has considered that at the time of the sale-deed, he was hardly of the age of 18 years and therefore, it cannot be accepted that he was having his own independent source of income, to purchase the suit property. Hence, it becomes difficult to accept that the suit property was self acquired property of Respondent No.3 or the Petitioner or her earlier co-owners had received lawful title or possession thereof from Respondent No.3-Jayvant.

8] The trial Court has also considered that the sale-deed was executed during the *pendency* of Regular Civil Suit No.170 of 2013. Moreover, even assuming that on the basis of the said sale-deed, the Petitioner has received the ownership or title thereto, as regards the possession, in respect of joint family property, such possession cannot be said to have been received unless the evidence of partition is shown. Mere entries in Revenue Record, in such situation, cannot be sufficient to hold that the Petitioner has received exclusive possession over the suit property.

9] Both the trial Court and the Appellate Court have rightly considered all these aspects of the case. In view of the concurrent finding arrived at, by both the Courts below, in writ jurisdiction, this Court has to restrain itself from interfering in the exercise of such discretion.

10] The Writ Petition therefore being devoid of merits, stands dismissed.

11] It is clarified that whatever observations made herein above are made only for the purpose of deciding this Writ Petition and the trial Court should not be swayed or influenced by them.

[DR.SHALINI PHANSALKAR-JOSHI, J.]