

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9618 OF 2017

1. Pandurang Maruti Kharat (Since Deceased),]
Through LRs :]
1a) Murlidhar Pandurang Kharat,]
Age 65 Years, Occ. Agriculturist,]
R/at Survey No.48, Siddhanath Wadi,]
Wai, Tal. Wai, Dist. Satara.]
1b) Radhabai Dhondiba Barkade,]
Age 57 Years, Occ. Agriculturist,]
R/at Limb-Dhagewadi,]
Tal. & Dist. Satara.]
1c) Shantabai Gulab Kharat,]
Age 45 Years, Occ. Agriculturist,]
R/at Dagadvasti, P.O. Lonad,]
Tal. Khandala, Dist. Satara.]
1d) Kuldeep Gulab Kharat,]
Age 15 Years, Occ. Education,]
R/at Dagadvasti, P.O. Lonad,]
Tal. Khandala, Dist. Satara.]
1e) Kantabai Narayan Valkunde,]
Age 53 Years, Occ. Housewife,]
R/at Walkundewadi, P.O.,]
Tal. Wai, Dist. Satara.]
1f) Alka Madhukar Kolekar,]
Age 51 Years, Occ. Housewife,]
R/at Post Nimam Padali,]
Tal. & Dist. Satara.]
1g) Surekha Balasaheb Mahanvar,]

- Age 47 Years, Occ. Housewife,]
R/at Shirval, Tal. Khandala,]
Dist. Satara.]
1h) Ramchandra Pandurang Kharat,]
Age 45 Years,]
R/at Survey No.2445, Tal. Wai,]
Dist. Satara.]
1i) Savita Shivaji Kachore, Age 45 Yrs.]
2. Murlidhar Pandurang Kharat,]
Age 59 Years, Occ. Agriculturist]
3. Bhikabai Murlidhar Kharat,]
Age - Adult, Occ. Agriculturist]
4. Mahesh Murlidhar Kharat,]
Age 21 Years, Occ. Agriculturist]
5. Vaishali Murlidhar Kharat]
Age 27 Years, Occ. Housewife]
6. Rajendra Murlidhar Kharat,]
Age 25 Years, Occ. Service]
All residing at Survey No.48,]
Siddhanath Wadi, Tal. Wai, Dist. Satara.] Petitioners

Versus

1. Santosh Uttamrao Barge,]
Age 35 Years, Occ. Service]
R/at Near Bhairoba Mandir,]
Koregaon, Tal. Koregaon, Dist. Satara.]
2. Hanumant Ramdas Gaikwad,]
Age 36 Years, Occ. Business]
R/at BVG House, Primier Plaza,]
Pune - Mumbai Road, Chinchwad,]
Pune - 411019.]
3. Pandurang Laxman Yadav,]

Age 45 Years, Occ. Business]
R/at B 11, Near Trimurti Temple,]
Trimurti Colony, Devkar Path,]
Pimpale-Gurav (Kavadenagar), Pune.] Respondents

Mr. Bhalchandra S. Shinde for the Petitioners.

Mr. Ashutosh M. Kulkarni for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 23RD JANUARY 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Shinde, learned counsel for the Petitioners, and Mr. Kulkarni, learned counsel for the Respondents.

2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the Judgment and Order dated 7th August 2017 passed by the Ad-Hoc District Judge-1, Satara, thereby dismissing the Miscellaneous Civil Appeal No.132 of 2012, which was preferred by the Petitioners against the order dated 25th November 2008 passed below “Exhibit-5” in Special Civil Suit No.218 of 2008 by the Civil Judge, Senior Division, Satara.

3. Thus, by this Writ Petition, the Petitioners are challenging the concurrent factual finding of the Trial Court and confirmed by the Appellate Court, while deciding the application for interim injunction

filed by the Respondents-Plaintiffs. The law is fairly well settled, as laid down in the Judgment of the Apex Court in the case of *Wander Ltd. & Anr. Vs. Antox India P. Ltd., 1990 (Supp.) SCC 727*, that, when the discretion is exercised by the Trial Court and, in this case, confirmed by the Appellate Court, the scope of interfering in the said discretion in the writ jurisdiction is very limited. Only if it is shown that the discretion exercised by the Trial Court and confirmed by the Appellate Court is perverse in a sense that, it is exercised without taking into consideration the factual aspects and material on record and is against the settled position of law, this Court can interfere in exercise of the said discretion.

4. In the present case, the submission advanced by learned counsel for the Petitioners is that, the Respondents-Plaintiffs have filed Suit simplicitor for injunction, claiming to have purchased the suit land and being in possession of the same. Admittedly, the suit land was ancestral joint family property of the Petitioners and Vendors of the Respondents. It is urged that, the Sale-Deed, on the basis of which the Respondents are claiming to have purchased the suit land, also clearly mentions that the predecessor of the Respondents-Plaintiffs is selling his “undivided share” in the joint family property. Hence, it is submitted that, when such 'undivided share' in the joint family property is sold by one of the co-owners, then, it is mandatory for the purchasers to file a Suit for partition and separate possession of his share in the suit land. He cannot file a Suit simplicitor for injunction against the other co-owners.

5. To substantiate this submission, learned counsel for the Petitioners has relied upon the Judgment of the Apex Court in the case of *Ramdas V/s. Sitabai, 2009 (5) Bom.C.R. 290*, wherein, the well settled legal position is laid down that,

“The purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. His only right is to sue for partition of the property and ask for allotment to him of that which, on partition, might be found to fall to the share of the co-parcener, whose share he had purchased.”

6. In my considered opinion, there cannot be any two opinions about the legal proposition laid down in this authority. The only question for consideration in this case is, *'whether the said legal proposition can be made applicable to the facts of the present case?'*, as in this case, both, the Trial Court and the Appellate Court, have categorically held, on the basis of the recitals made in the Sale-Deed executed by the Petitioners themselves in favour of one Shriprasad Fattesingh Jadhav in respect of the half portion of the same property viz. Survey No.48/1, that, he has become the sole and exclusive owner of the suit property, in view of the 'Oral Partition' arrived at between him and his brother with respect to this particular survey number. Therefore, when the Petitioners themselves had acted upon the 'Oral Partition' and sold the share allotted to them in the said 'Oral Partition', now they cannot contend and, in fact, are estopped from contending that the property is still the

ancestral joint family property and, therefore, without seeking partition, Respondents-Plaintiffs cannot claim to be in possession of the suit property or claim the relief of interim injunction. It is pertinent to note that, the relevant Mutation Entry No.2960 is also made to show that predecessor of the Respondents, Ashok Dadasaheb Jambure, paid the loan taken by Anna Maruti Kharat against this particular Survey No.48 and hence, the charge of the Bank over the said property is released. This fact, as observed by the Trial Court, prima facie, goes to show that the suit land must be in possession of Ashok Jambure in 1995, otherwise, no prudent man would pay the loan and release the charge.

7. It is also pertinent to note that, in Regular Civil Suit No.34 of 1992, which is pending in the Court and is filed by Anna and his sons, the present Petitioner No.2-Murlidhar has admitted in his written statement that, partition has taken place orally in the year 1988, even with respect to Survey No.48.

8. It may also be stated that, the Mutation Entry No.2939, entering the name of the Respondents to the suit land on the basis of the Sale-Deed, is already made. Though the Petitioners approached the Competent Authority to cancel the same, they were not succeeded and it is confirmed upto Additional Commissioner, Pune.

9. Though it is contended by the Petitioners that, one of the

purchasers with Ashok Jambure, namely, Abubakar Ahmedsaheb Shikalgar was not an agriculturist, the perusal of the impugned order passed by the Trial Court reveals that, the said contention was also rejected upto Additional Commissioner, Pune.

10. In such situation, having regard to all these facts, there is no substance in the challenge raised by the Petitioners to the concurrent finding of fact recorded by the Trial Court and confirmed by the Appellate Court.

11. The perusal of the impugned orders passed by both the Courts below is sufficient to hold that, both the orders are based on the material produced on record and after proper appreciation thereof. Hence, in the writ jurisdiction of this Court and in view of the well settled legal position, this Court cannot interfere in the discretion exercised by both the Courts below, as no such ground is made out for interference.

12. The Writ Petition, therefore, being without merits, stands dismissed.

13. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.]