

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3401 OF 2019

**JAYSHRI SAKHARAM DHOLE
VERSUS
SEEMA SHYAM MAGAR AND OTHERS**

...
Advocate for the Petitioner : Shri U. U. Wagh
Advocate for Respondent Nos. 1 to 3 : Shri N. V. Gaware
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 03rd OCTOBER, 2019.

...

PER COURT :

1. This matter was heard for quite some time on 25/09/2019 and again today.

2. On 08/03/2019, this Court (Coram : Sunil P. Deshmukh – J.) had passed the following order :-

"1. Issue notice to respondents, returnable on 8th April, 2019.

2. Learned counsel for petitioner urges for interim interim relief. He submits that perusal of the order would show that it is without consideration of the objections raised by the petitioner and is a non-speaking order. He apprehends that alienation would give rise to complications and multifarious proceedings.

3. *In the circumstances, there shall be ad-interim relief in terms of prayer clause (C), till returnable date.*

4. *In addition to court process, petitioner shall serve the respondents privately by any legally acceptable mode and file an affidavit with tangible proof of service. In case of failure to serve the respondents and to file service affidavit as directed, ad-interim relief as has been granted would cease to operate."*

3. I do not see from my learned brother's order as to whether the petitioner had brought it to the notice of this Court that in Regular Enquiry (Misc. Civil) Application No. 180/2018, this petitioner was nowhere in the array of the applicant or the respondent. The applicant was the sole respondent herein who had moved an application praying for permission to sell her share of the property in the interest of her minor children admeasuring 0 H. 12.88 R. in Block No. 355 at village Yeli, Taluka Pathardi, District Ahmednagar.

4. The learned Advocate for the petitioner has strenuously canvassed that he is aggrieved by the impugned order dated

26/02/2019 passed by the Court below, by which, permission has been given to the respondent herein to sell the portion of the land and deposit Rs. 50,000/- in a nationalized bank as fixed deposit receipt till the minors Swapnil and Sanjana attain the age of a majority. The FDR was to be deposited in the Court and only Rs. 30,000/- was to be retained by the respondent.

5. I called upon the learned Advocate for the petitioner to indicate as to what is his locus in challenging the impugned order dated 26/02/2019. He submits that he is an intervener before the Trial Court. When called upon to indicate as to which was his intervention application, he submits that Exhibit 14 dated 26/02/2019 at page 18 of the petition paper book was the intervention application.

6. I am unable to accept the submission of the petitioner that Exhibit 14 is an intervention application. The title of the application is

“याकामी त्रयस्थ इसम जयश्री सखाराम ढोले यांचे वतीने अर्जदार

यांच्या अर्जावर म्हणणे येणेप्रमाणे,—”

which means that it was purely the petitioner's written say to the application filed by the respondent seeking permission to sell. The prayer under paragraph 7 in Exhibit 14 reads as

“अर्जदार यांचा अर्ज खर्चासह नामंजुर करण्यात यावा.”

which means that the applicant's application be rejected.

7. I called upon the learned Advocates appearing for both the parties to indicate from any provision of law that an application filed under Section 8 of the Hindu Minority and Guardianship Act, 1956 permits any person to walk into the proceedings and without filing any application for intervention, seek judicial orders by filing a written say. The learned Advocates conceded that there is no such provision. It is common practice that in matters where there are no respondents, of the nature of a civil application or an heirship certificate or in a matter of this kind, the Court normally issues a proclamation which is to be published in the largely circulated newspaper so as to invite objections. The learned Advocate for the respondent original applicant frankly submits that the Trial Court has not issued any such proclamation.

8. The peculiar facts involved in this case are that the petitioner has, right from the date my learned brother granted relief on 08/03/2019, attempted to canvass that he is a party to the proceedings. The position is completely contrary.

9. In the light of the above, though at first blush it appears that the petitioner was making out a case for intervention, I have noticed that there was no application for intervention before the Trial Court.

10. The learned Advocate for the respondent, original applicant, relies upon the judgment delivered by the Honourable Apex Court in the matter of *Gajara Vishnu Gosavi Vs. Prakash Nanasahed Kamble & ors. 2010(3) Bom.C.R. 388* to support his contention that in an ancestral property wherein the coparceners do not have a partitioned share and the property and such coparceners have an undivided share in the ancestral property, the purchaser of any such share sold by any shareholder, cannot take possession of the undivided share until there is a proper partition of the property whereby the share is identified and demarcated.

11. In view of the above, since I find that the petitioner has not moved any application before the Trial Court seeking intervention to be arrayed as a respondent in the proceedings, this petition is not being entertained. In this backdrop, the learned Advocate for the original applicant makes a statement that the applicant intends to sell her share of 0 H. 12.88 R. which is in her possession and will not sell even an inch of land more than this share which belongs to her.

12. In view of the above, this petition is disposed off without causing an interference in the impugned order. Needless to state, the petitioner will be at liberty to avail of such remedies as may be permissible in law.

(RAVINDRA V. GHUGE, J.)

shp/-