

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5954 OF 2018

JAYHIND NAMDEO BIRAJDAR THROUGH GPA
VERSUS
PARVATIBAI KASHINATH PATIL AND OTHERS

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Advocate for Petitioner : Shri Urgunde Suhas P.
Advocate for Respondents 1 & 2 : Shri Rathi Swapnil S.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: April 25, 2019

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PER COURT :-

1. The petitioner / defendant No.3 is aggrieved by the interlocutory order passed by the appellate Court, by which, his application Exhibit 21, seeking leave to amend the Written Statement at the stage of final arguments in RCA No.141 of 2014, has been rejected.

2. I have heard the strenuous submissions of the learned Advocates for the petitioner and respondents 1 and 2, both being the original plaintiffs.

3. The petitioner is a purchaser of a property, which is subject matter of the suit. The suit is filed by the plaintiffs for seeking partition and separate possession. Since one of the properties has been sold by defendant 2 in favour of the petitioner / defendant 3, an

independent Written Statement was entered by the petitioner. Concerned sale deed of 2007 is said to contain the recital of the reasons. It is mentioned that there was a legal necessity to the family of defendant 2 and for discharging the private debts and loan and to purchase a convenient agricultural land, that the said land was sold to the petitioner / defendant 3.

4. It is undisputed that the matter is at the stage of advancing final arguments before the first appellate Court. There was no cross-examination or suggestion in the cross-examination of the plaintiffs, before the trial Court, by defendant 3 as regards legal necessity. The suit was decreed on 12.8.2014. Even in the appeal filed by defendant 3, the ground of legal necessity has not been taken.

5. Learned Advocate of the plaintiffs submits that the appeal before the appellate Court is ready for final arguments and it is from 2016 onwards that the matter has been adjourned. Exhibit 21 was filed on 13.12.2017.

6. The appellate Court, while passing the impugned order dated 1.10.2018, has recorded that it appears from the Written Statement that defendant 3 has pleaded about the sale of the land being for the welfare of the family. No suggestion was given in the cross-

examination. Sale deeds were sought to be placed on record to indicate that he had purchased the property in the name of the wife of the brother of defendant 2, which property was not included in the suit for partition and separate possession.

7. While exercising supervisory jurisdiction, this Court cannot cause an interference in the impugned order, merely because a different view could possibly be taken. Unless the impugned order is perverse, erroneous and likely to cause gross injustice to any litigant, considering the law laid down in Syed Yakoob Vs. K.S. Radhakrishnan and others [AIR 1964 SC 447] and Surya Dev Rai Vs. Ram Chander Rai [(2003) 6 SCC 682], an interference is uncalled for.

8. In view of the above, this petition being devoid of merits, is dismissed.

(RAVINDRA V. GHUGE, J.)

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