

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

WRIT PETITION NO. 10925 OF 2019

RAOSAHEB S/O DHONDIBA BHAVE
VERSUS
VISHNU S/O DHONDIBA BHAVE AND OTHERS

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Advocate for the Petitioner : Shri B. N. Patil

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 26th NOVEMBER, 2019.

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PER COURT :

1. The petitioner / original plaintiff in Special Civil Suit No. 41/2018 is aggrieved by the order dated 05/09/2018 passed by the Trial Court, by which, his application Exhibit 5 seeking temporary injunction has been rejected. He is further aggrieved by the judgment and order dated 14/03/2019 delivered by the Appellate Court, by which, his Miscellaneous Civil Appeal No. 75/2018 has also been dismissed.

2. The learned Advocate for the petitioner has strenuously criticized the impugned orders. He relied upon the seven grounds formulated in the memo of

the petition. The gravamen of his submissions is that both the courts below did not consider that there was a presumption of a joint family as long as partition is not proved. The properties cannot be termed to be self acquired and will have to be considered that there was a joint nucleus from their family earnings to purchase the plots. He further adds that some of the properties were purchased from the joint family nucleus in the name of the plaintiff and some were purchased in the names of defendants. The plaintiff and the defendants are close blood relatives and this was the family arrangement.

3. I find that the suit for partition has been preferred in 2018. The suit property comprises of four plots purchased in the name of the deceased Dropadabai Ramchandra Bhawe, defendant No.1 as well as the plaintiff, by registered sale-deed Nos. 3079, 3080, 3530 and 3531 concerning CTS Nos. 1942 and 1943. It is averred by the parties that the plaintiff and the defendants are from the Burud Caste. Their main business is of selling bamboos and articles

prepared from bamboo shoots.

4. It is contended that there was no ancestral property inherited by the father of the plaintiff, defendant No.1 and deceased Ramchandra, who had started the said business and died in 1972. Several aspects of the contentions of the parties including the the properties purchased and the considerations paid, have been considered by the courts below.

5. Needless to state, the party, who seeks injunctory order has to establish a *prima facie* case.

6. The burden to prove that the property was a joint family property lay with the plaintiff since he had asserted the same. *Prima facie* both the courts have concluded that the plaintiff could not prove that the properties mentioned in the schedule were joint family properties and were purchased from the nucleus of the family business.

7. It is well settled law that in the face of

concurrent findings, the supervisory jurisdiction of this Court has to be exercised very cautiously, keeping in view that it is a revisional jurisdiction. I, therefore, do not find that the petitioner has been able to point out at a *prima facie* stage, any such factor which would convince the Court that the property will have to be considered to have been purchased from the nucleus of the family business.

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

9. It is, however, made clear that the impugned orders as well as the observations in this order, are all restricted to a *prima facie* appreciation of the contentions and the record available. The Trial Court shall decide the suit on its own merits by taking into account, the oral and documentary evidence.

(RAVINDRA V. GHUGE, J.)

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