

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

WRIT PETITION NO.4320 OF 2014

Rajendra Bhatu Chaudhari,
Age : 36 years, Occupation : Business,
R/o CTS No.3221, V.K.Chaudhari Market,
Agra Road, Dhule,
Taluka and District Dhule.

...PETITIONER
(Orig. Plaintiff)

-VERSUS-

Sunil Shamrao Mahale,
Age : 46 years, Occupation : Trader,
R/o CTS No.3032, Usgalli,
Dhule, Tq. and District Dhule.

...RESPONDENT
(Orig. Defendant)

...
Advocate for the Petitioner : Shri Vinesh Solshe h/f Shri Patil Mahesh H.
Advocate for the Respondent : Shri Kulkarni Mukul S.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th February, 2019

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner/ original Plaintiff is aggrieved by the order dated 29.04.2013 passed by the Trial Court by which, the application Exhibit 23 filed by the Petitioner/ Plaintiff in RCS No.491/2012 seeking

impounding of the document, has been rejected.

3 I have considered the submissions of the learned Advocates for the respective sides.

4 The Petitioner/ Plaintiff has preferred the suit purely for injunction. Admittedly, the issue of partition and separate possession is not the subject matter before the Trial Court. The Plaintiff also concedes that he has come forward with a case that there had never been partition in between the family members with regard to the ancestral property.

5 The Defendant has filed his written statement contending that there was an oral partition earlier and in order to put the details of such partition on record, the deed was prepared on 31.01.2000 and another deed was also prepared on the same day. It is the case of the Defendant that since earlier there was a partition, these two documents are executed only to place on record the details of such partition and it is a family arrangement.

6 In my view, when the Plaintiff has put forth that there was never any partition in between the family members, the onus and burden to prove the case of an earlier partition would lie on the Defendant who has put forth the said theory. It would be the outlook of the Defendant to have the said two documents proved before the Trial Court in accordance with the Indian Evidence Act.

7 In view of the above and since the Trial Court would consider

the probative value of these two documents within the framework of the Indian Evidence Act and in the light of the averments made by the Defendant, I do not find that the impugned order would call for any interference. The Trial Court has concluded that it was purely a family arrangement for which the said two documents have been prepared and it would, therefore, be for the respective parties to prove their averments set out in the plaint and the written statement.

8 Considering the above, this Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)