

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8462 OF 2019

Kalpana Dattatraya Petkar

... Petitioner

Vs

Sangita Nitin Pawar & Anr.

... Respondents

...

Mr. Sandeep M. Phatak for the Petitioner.

CORAM : SANDEEP K. SHINDE J.

DATE : AUGUST 5, 2019

P.C. :

1. Heard learned counsel for the petitioner. Petitioner's father Sitaram died intestate in 1982 leaving behind petitioner (married daughter), Dharma (predeceased son) and Shankar, another son. On 11th May, 2007, vide deed of partition executed by and between Pushpa (widow of Dharma) and Shankar, joint family properties ("Suit Properties" for short) were partitioned. It is petitioner's case that she has been excluded from the partition though she has a right in the suit properties. Soon after the execution of the partition deed on 12th December, 2007, Pushpa, sister-in-law of the petitioner, agreed to sell her share of the suit property to one

Sangita Nitin Pawar. Sangita Nitin Pawar instituted the suit for specific performance of the agreement dated 12th December, 2007 against Pushpa in the Court of Civil Judge, Senior Division, Satara being Special Civil Suit No.136 of 2008. The suit was decreed and successive appeals preferred by Pushpa were dismissed. Thus, Sangita instituted Special Darkhast No.14 of 2014 in the Court of Joint Civil Judge, Senior Division, Satara.

2. Petitioner on learning about the partition deed and the decree, instituted comprehensive suit being Regular Civil Suit No.102 of 2018 in the Court of Civil Judge, Junior Division, Satara on 11th June, 2018 seeking share in the joint family properties and for declaration that decree passed in the Special Civil Suit No.136 of 2018 shall not be binding on her. In the said suit, petitioner has also filed an application for interim relief, which is pending.

3. On 14th June, 2018, petitioner had filed an application in the Special Darkhast No.14 of 2014 for impleading herself as party to

the said proceedings and also requested for stay on execution until her right in the property is decided. In other words, the petitioner obstructed execution of the decree passed in Special Civil Suit No.136 of 2018. Her applications below Exhibits 39 and 41 in the Special Darkhast were thus under Order 21 Rule 97 of the Code of Civil Procedure, 1908 ('CPC' for short).

4. The learned Executing Court rejected both the applications against which this Writ Petition is preferred.

5. In terms of Rule 103 of Order 21 of the CPC, 'where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.' In view of this provision, the impugned order below Exhibit 39 is a deemed decree under Rule 103 of the Order 21 of the CPC. The remedy available to the petitioner against this order is to present an appeal under Section 96 of the CPC; however, petitioner has

preferred Writ Petition under Article 227 of the Constitution of India. Thus, at the first place writ petition is not maintainable.

6. It may also be stated that petitioner has filed substantive suit seeking declaration of her rights in the properties and consequential reliefs to hold and declare that the partition deed dated 11th May, 2007 executed by and between Pushpa and Shankar is not binding on her. Admittedly, application for interim relief in the substantive suit is pending in the said suit.

7. Learned counsel for the petitioner submits that Sitaram, the common ancestor, died in 1982 and after his demise, her name in the suit properties was also mutated. He submits that Pushpa, her sister-in-law and brother executed partition deed behind her back and deprived her of her rights in the joint family properties. The learned counsel for the petitioner has placed on record copy of mutation entry no.679 relating to the properties bearing land survey nos.639, 836 and 835 part. Admittedly, property sold by Pushpa to

Sangita is a part of land bearing Gat No.639 wherein prima-facie it appears petitioner has a right.

8. Thus, taking into consideration facts of the case, I am not inclined to entertain this petition since petitioner has an alternate remedy. Besides, petitioner has also filed substantive suit and her application for temporary injunction for the relief sought is pending. However, the fact which cannot be ignored is that the petitioner has been deprived of her rights in the property which her sister-in-law has sold to one Sangita and execution proceedings arising out of the decree in Special Civil Suit No.136 of 2008 are pending.

9. In the light of the facts as aforesaid, petitioner is granted liberty to file appropriate proceedings before the appropriate Court and seek reliefs as advised within four weeks from the date of uploading of this order on the website and in the meantime, proceedings in the Special Darkhast No.14 of 2014 pending on the file of Civil Judge, Senior Division, Satara are stayed.

10. It is made clear that this Court has not expressed any opinion on the merits of the matter and if any proceedings are filed by the petitioner, concerned Court shall decide the same on its own merits without being influenced by any of the observations made in this Writ Petition.

11. Needless to state that if the petitioner fails to institute appropriate proceedings within four weeks from today, executing Court shall proceed with the Special Darkhast No.14 of 2014.

12. Petition is disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J.)