

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13808 OF 2018**

Devendra Dhanaji Mandavkar & Ors. ... Petitioners

Vs

Sunanda Dhanaji Umbarkar & Ors. ... Respondents

Mr. Prafulla B. Shah i/b. Mahesh V. Rawool, Advocates for the
Petitioners.

Mr. Aniket P. Ranade, Advocate for Respondent No. 1.

CORAM : SANDEEP K. SHINDE J.

DATE : July 4th, 2019

P.C. :

1. Petitioners are defendants no. 1, 2, 5, 6, 10/2, 10/3, 10/5 and 10/6 in the suit for partition, being Regular Civil Suit No. 18 of 2007 instituted by the respondent no. 1 herein (plaintiff), in the Court of Civil Judge, Junior Division at Rajapur. Grampanchayat House no. 103 situated at Kodavali, Taluka Rajapur is one of the suit properties. Pending suit, petitioner no. 1 (defendant no. 1) requested the Trial Court to permit him to repair House No. 103, which is more than 100 years old. Learned Trial Court declined his request and rejected the application on 12.09.2011. Another application was filed below

Exhibit 208, however by order dated 13.07.2018, the Trial Court declined the permission to repair House No. 103.

2. It is against the order dated 13.07.2018, the petitioners have preferred this Writ Petition under Article 227 of the Constitution of India.

3. In support of their contention that House requires urgent repair they have placed on record Panchanama at page no. 68 and photographs at page nos. 69 and 70. It is evident from photographs and panchanama, the House No. 103 is in bad state and requires urgent restoration.

4. The petitioners, have filed an undertaking executed by the petitioner no. 1, who undertakes, that he shall not claim any equity of preferential right on the ground that he repaired the House No. 103. Undertaking is taken on record and marked as 'X-1' for identification.

5. Though the undertaking is filed by the petitioner no. 1, Mr. Shah, learned counsel for the petitioners, on instructions, states that other petitioners will abide by the undertaking given by the

petitioner no. 1. The statement is accepted. Thus, taking into consideration the facts of the case, I am of the view that if the permission is granted to repair House No. 103, it will not cause prejudice to the right of plaintiffs or defendants. Thus, in view of the undertaking and the facts of the case, the impugned order is set aside and the application below Exhibit 208 filed in Regular Civil Suit No. 18 of 2007 is allowed. Petition is allowed in the aforesaid terms.

(SANDEEP K. SHINDE, J.)