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Bharat
D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12724 OF 2017**

Baban Anandrao Satav and Others Petitioners.

V/s

Pandurang Keshav Satav
(Since deceased through LRs)
1A. Vimal Pandurang Satav & Ors Respondents.

Mr. Ravindra S. Panchundkar for the Petitioners.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 15, 2019

P.C.:-

1] Heard.

2] Exhibit-20 is an application moved in Civil Appeal No.1018 of 2016 in which Judgment delivered in RCS No.4280 of 2012 is questioned. The said appeal is preferred by the Petitioner, who is not a party to the decree passed in the aforesaid suit. During pendency of appeal and the present Petition, application came to be moved by the Respondents therein, seeking injunction, as it is claimed that the Petitioner-Appellant is carrying out certain construction.

3] The factum of carrying out construction was denied by the Petitioner vide Exhibit-23 and reply to the application. The learned Ad-hoc District Judge, while appreciating the prayer for injunction, has noticed that there existed decree after final adjudication of the rights of parties to the suit, which is under challenge at the behest of the Petitioner.

4] It is the case of the Petitioner that he is a co-sharer and was not impleaded as party and as such, he has rightly taken recourse to provisions of Section 96 of the Civil Procedure Code.

5] As regards maintainability of appeal under Section 96 of the Civil Procedure Code at the behest of the aggrieved party who was not in the array of the Plaintiffs or Defendants in the suit for partition, cannot be disputed. What could be inferred from the record, particularly the reasons recorded by the learned Ad-hoc District Judge while granting injunction to maintain status of the property as it is, is that the Court was satisfied that the Petitioner-Appellant is trying to change the nature of the original suit property i.e. he is trying to

develop the same. In the aforesaid background, injunction granted on August 1, 2017 against the Petitioner, in my opinion, does not call for any interference. As such, Petition is dismissed.

6] However, considering the fact that the Petitioner, who claims to be the co-owner, is restrained from developing his own share, as is claimed. Hearing of Civil Appeal No.1018 of 2016 on the file of the learned Ad-hoc District Judge, Pune with other connected appeals which have arisen out of the decree passed in RCS No.4280 of 2012, is expedited. Let the appeals be decided within six months.

(NITIN W. SAMBRE, J.)