

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

WRIT PETITION NO. 6849 OF 2020

Laxmikant S/o Diliprao Garje
Age 37 years, Occ : Agril.,
R/o Kalpana Nagar Housing Society,
Sham Nagar, Latur, Tq. & Dist.Latur

..PETITIONER
[Ori.Defendant]

VERSUS

Shrikant S/o Diliprao Garje
Age 30 years, Occ : Agril.,
R/o Kalpana Nagar Housing Society,
Sham Nagar, Latur, Tq. & Dist.Latur

..RESPONDENT
[Orig.Plaintiff]

.....

Mr. H.V.Patil, Advocate for petitioner.
Mr. S.S.Panale for respondent.

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CORAM : MANGESH S. PATIL, J.
DATE : 16.12.2020

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2] The petitioner has preferred this Petition under Article 227 of the Constitution of India impugning the order passed by the learned Additional District Judge allowing the application of the respondent for temporary injunction under Order XXXIX Rule 1 of the Code of Civil Procedure, thereby

quashing and setting aside the order of rejection of the application passed by the learned Civil Judge, Junior Division in the Suit between the parties. A very short point which arises for determination is as to if a co-owner who claims that the property is the joint property of both the sides which was received as a gift from their grand father, is entitled to temporary injunction against the co-owner for restraining him from selling a specific portion of the joint property.

3] The respondent filed Regular Civil Suit No.234/2020 seeking perpetual injunction restraining the petitioner from alienating any operation of the suit property.

4] The learned advocate for the petitioner would submit that it is a matter of fact that by a gift deed the grand father gifted the suit property to the parties to the litigation and they have received it jointly. However, subsequently they have partitioned it. The petitioner has also filed a Suit against the respondent claiming injunction from disturbing his possession over the southern portion which has been allotted to his share in view of the partition. The petitioner is now intending to sell such portion which has come to his share. He would then submit that the respondent being the joint owner cannot maintain a suit for injunction against his co-owner-petitioner. Ignoring all these facts and law, the learned Additional District has illegally intervened and reversed the order of rejection of the application passed by the learned Civil Judge.

5] The learned advocate for the respondent submits that though it is trite that a co-owner cannot claim injunction against the other co-owner, the

principle would not be applicable where one of the co-owners asserts his exclusive possession over a portion of the joint property. That principle cannot be made applicable when one of the co-owners tries to dispose of a specific portion of the joint property. This is what is being attempted by the petitioner. Appreciating the facts and the law, the learned District Judge has rightly reversed the order of the learned Civil Judge.

6] Admittedly, the suit property has been received by the petitioner and the respondent jointly under a registered gift deed executed by their grand father on 26/10/2008. Though some attempt is being made by the petitioner to show that there was subsequently some sort of arrangement demarcating their individual shares, at this juncture there is not enough material to substantiate this stand.

7] As has been rightly submitted by the learned advocate for the respondent, though a co-owner cannot maintain suit for injunction against the other co-owner, the principle cannot be applied in case of a situation where the other co-owner asserts his exclusive possession over a portion of the joint property. The matter in hand presents a peculiar scenario. The petitioner is claiming to be in possession of a specific portion of the suit property and is attempting to sell it. Needless to state that if the property still continues to be joint, his such attempt would certainly be detrimental to the principle of joint ownership. This is what has been concluded by the learned District Judge and what was overlooked by the learned Civil Judge.

8] In view of these circumstances, I find no illegality in the impugned order passed by the learned Additional District Judge in clamping temporary

injunction.

9] The Writ Petition is dismissed. The Rule is discharged.

[MANGESH S. PATIL, J.]

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