

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

WRIT PETITION NO. 5337 OF 2019

Hanmant B. Kadam

..Petitioner

vs.

Narayan B. Kadam

..Respondent

Mr. N.N. Wadikar i/by N .V. Pawar for the Petitioner.

Mr. V.S.Talkute for the Respondent No.1.

CORAM : REVATI MOHITE DERE, J.

DATE : 07th February, 2020

PC:

1. Heard learned counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 21.7.2018 passed by the learned 3rd Joint Civil Judge, J.D., Satara below Exh. 5 in R.C.S. No.276 of 2018 as well as the order dated 23.1.2019 passed by the learned District Judge-5, Satara in Misc. Civil Appeal No.128 of 2018.
3. Learned counsel for the petitioner submitted that, the petitioner may be permitted to continue with the construction of the house on City Survey No.340, since the construction has come upto the first slab. He submits that, because of the impugned order, the petitioner is unable to continue with the construction and as such, material worth lacs of rupees is getting destroyed. He further submits that, the petitioner had obtained permission for constructing his residential house on City Survey No.340,

from the concerned Gram Panchayat. He further submits that, the suit property is ancestral property and there was oral partition in respect of the said suit property. According to the petitioner, pursuant to the said oral partition, the respondent was not entitled to an equal share in the suit property and that he was entitled to only one guntha land.

4. Learned counsel for the respondent opposed the petition. He submitted that, no interference is warranted in the impugned order. He submitted that the respondent No.1 had produced documents like the Gram Panchayat extract of the suit property, Certificate of the Gram Panchayat, Malgaon regarding non issuance of permission for construction to the petitioner to disprove the petitioner's case. According to the learned counsel for the respondent No.1 in the oral partition, both, the petitioner and the respondent No.1 had got $\frac{1}{2}$ share in both the City Survey Nos. 340 and 341 situated at Village Malgaon, Taluka and District Satara.

5. Perused the papers including the impugned order. Both the courts below have in detail gone into the merits and have come to the conclusion that the respondent No.1 had prima-facie made out a case, for grant of injunction i.e. for restraining the petitioner (defendant) from making further construction of his house on city survey no.340. Infact, the respondent-plaintiff had produced several documents for grant of interim relief i.e. Gram Panchayat extract of the suit property, the property extract of City Survey Nos. 340 and 341, map and photographs of the property. It

appears that the certificate relied upon by the petitioner to show that he had permission to construct the residential house was revoked subsequently.

6. No infirmity can be found in the impugned orders. Considering the aforesaid, no interference is warranted in the impugned order. Petition is dismissed.

REVATI MOHITE DERE, J.