

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1873 OF 2020

1. Gulab s/o. Jaywant Satav,
Age 74 years, Occu. Agril.,
2. Balu s/o. Jaywant Satav,
Age 62 years, Occu. Agril.,
3. Bhaskar s/o. Jaywant Satav,
Age 46 years, Occu. Agril.,
4. Ashish s/o. Lahanu Shinde,
Age 28years, Occu. Agril.,
5. Rahul s/o. Bhaskar Satav,
Age 25 years, Occu. Agril.,

All R/o. Arangaon Dumala,
Tal. Shrigonda, District Ahmednagar .. Petitioners
(Original Defendants)

Versus

Shantaram Jaywant Satav,
Age 60 years, Occu. Agril.,
R/o. Arangaon Dumala,
Taluka Shrigonda, District Ahmednagar .. Respondent
(Original Plaintiff)

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Mr. Dilip B. Rode, Advocate for Petitioners-original defendants
Mr. Suresh P. Salgar, Advocate holding for Mr. Niteen V. Gaware,
Advocate for respondent-original plaintiff

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 04-12-2021

ORAL JUDGMENT :-

Rule. Rule is made returnable forthwith. Heard finally with the consent of the learned Advocates for the appearing parties.

2. This petition is directed against the order dated 11-03-2019 passed by the learned District Judge-6, Ahmednagar, in Miscellaneous Civil Appeal No. 37 of 2018, thereby allowing the appeal and setting aside the order dated 07-02-2018 passed by 2nd Joint Civil Judge, Junior Division, Shrigonda, District Ahmednagar, rejecting the application Exhibit-5, in Regular Civil Suit No. 66 of 2017 and granting injunction against present petitioners-defendants.

3. Regular Civil Suit No. 66 of 2017 is filed by the respondent-plaintiff against the petitioners-defendants seeking a declaration that the sale deed dated 1st July, 2015 of the suit property is not binding on the share of plaintiff and also seeking permanent injunction against the defendants, not to change the nature of suit property and the plaintiff be given one-fourth ($\frac{1}{4}^{\text{th}}$) share in the suit property, which is claimed to be a joint Hindu family property.

Along with the suit, application Exhibit-5 claiming relief of not to create third party interest and not to change the nature of the suit property, was filed.

The suit was resisted by the defendants-petitioners by filing written statement-cum-say to the application Exhibit-5. The trial Court rejected the application Exhibit-5.

The plaintiff preferred Miscellaneous Civil Appeal No. 37 of 2018, challenging the order passed by the trial Court and the appellate Court allowed the application Exhibit-5. This order is impugned in the present petition.

4. Heard learned Advocate for the petitioners and learned Advocate for the respondent.

5. It is not in dispute that the suit for declaration and partition is filed by the plaintiff. Immovable property is the subject matter of the suit. An injunction in respect of the suit property is sought by the original plaintiff. The trial Court rejected the same on the ground that there is no material on record to show that the suit property was kept joint after partition in the year 1984. Therefore, the trial Court came to the conclusion that it can not be held at this stage, that the suit property is joint family property of plaintiff and defendants.

6. The appellate Court, on the other hand, has recorded a finding that it is the case of the plaintiff that there was an oral understanding to keep 1 Hectore land (suit property) in joint,

common cultivation and occupation of all. The appellate Court, therefore, held that, where the rival questions are going to be adjudicated, only because *prima facie* there is no document showing otherwise than Mutation Entry No. 83, it may not be proper to create third party interest in the suit land. The plaintiff has only asked a relief that the nature of the property should not be changed, including the alienation and transfer of the same and there is no restraint on the use and enjoyment of the land purchased by defendants no. 4 and 5. The appellate Court, therefore, held that any alienation, transfer of the suit land would create complexity in the suit and also lead to multiplicity of the proceedings, and in that case, the plaintiff will have to suffer irreparable loss.

7. The learned Advocate for the petitioner has relied on the ratio in ***Sk. Sattar Sk. Mohd. Choudhari Versus Gundappa Amabadas Bukate, (1996) 6 Supreme Court Cases 373***, wherein the Honourable the Supreme Court held thus :

“23.

“the true effect of partition was that each coparcener got a specific property in lieu of his undivided right in respect of the totality of the property of the family.”

24.

“Having regard to this basic character of joint Hindu family property, it cannot be denied that each coparcener has an antecedent title to the said property, though its extent is not determined until partition takes place. That being so, partition really means that whereas initially all the coparceners have

subsisting title to the totality of the property of the family jointly, that joint title is by partition transformed into separate titles of the individual coparceners in respect of several items of properties allotted to them respectively. If that be the true nature of partition, it would not be easy to uphold the broad contention raised by Mr. Purshottam that partition of an undivided Hindu family property must necessarily mean transfer of the property to the individual coparceners.”

25.

“Partition does not give him (a coparcener) a title or create a title in him; it only enables him to obtain what is his own in a definite and specific form for purposes of disposition independent of the wishes of his former co-sharers.”

8. There cannot not be a dispute about the above proposition set out by the Hon’ble Apex Court. The appellate Court, by a well reasoned order, has come to a conclusion that, *prima facie* case is made out by the plaintiff and the balance of convenience lies in his favour, irreparable loss will be caused to him, if the nature of suit property is changed by the defendants. Hence, by the impugned order, the appellate Court has temporarily restrained defendants no. 3 to 5 from alienating/transferring/disposing of and creating any third party interest in the suit lands. The appellate Court has rightly exercised its discretion. No case is made out by the petitioners to interfere in the matter.

9. Writ petition is, therefore, dismissed. Rule is discharged. No order as to costs.

(NITIN B. SURYAWANSHI)
JUDGE