

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

918 WRIT PETITION NO.6887 OF 2021

**SHABASTIN RAFAYAL KEDARI AND ANOTHER
VERSUS
MERY MARSHAL KEDARI AND OTHERS**

Mr. Shaikh Mazar A. Jahagirdar, Advocate for the petitioners

CORAM : SANDEEP K. SHINDE, J.

DATE : 25-06-2021

P. C.

. Petitioners-Plaintiffs, instituted RCS No. 91 of 2017 in the court of Civil Judge Junior Division, Shrirampur. The suit property is plot No. 40-A in Varsha Co-operative Housing Society in Grmapanchayat Shrirampur. Rafayal Kedari was owner of the suit property. Defendant No. 1 is daughter-in-law. Wheres plaintiff Nos. 2 and 3 are sons of Rafayal Kedarei. Rafayal Kedari died on 04-01-2016. On 21-10-2015 Rafayal executed the registered will in favour of the defendant No.1. Defendant No. 2 is husband of defendant No. 1. In the subject suit the petitioners-plaintiffs have challenged the 'Will' dated 21-10-2015. Pending suit learned trial court restrained the defendants from transferring or creating third party interest in the suit property. Yet, the trial court declined to restrain the defendants from making construction on open space adjacent to the suit property. Against this order, aggrieved plaintiffs have preferred this petition under Article 227 of the Constitution of India.

2. Heard learned counsel for the parties.

3. The respondents-defendants are claiming interest in the suit property on the basis of registered will dated 21-10-2015; whereas the petitioners-plaintiffs have denied the will executed by their father in favour of the defendant No. 1 and would assert their right in the suit property by inheritance.

4. In consideration of the facts of the case, in my view the no prejudice would cause to the plaintiffs, if the defendants make construction on the open space adjacent to the suit property, in accordance with law but shall not claim equity. With these observations the petition is disposed of with no order as to costs.

[SANDEEP K. SHINDE, J.]