

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

WRIT PETITION NO.7306 OF 2020

Bapurao s/o Dadarao Mhaske,
Age: 62 years, Occ: Agriculture,
R/o.: Kanhori, Tq. Phulambri,
Dist. Aurangabad.

... Petitioner

Versus

1. Puja w/o Babasaheb Mhaske,
Age: 27 years, Occ: Household,
R/o.: Kanhori, Tq. Phulambri,
Dist. Aurangabad.
At present, C/o. Shivaji Shankar Shirsath,
Pimpalgaon Walan, Tq. Phulambri,
Dist. Aurangabad.
2. Shivaji S/o Shankar Shirsath,
Age: 55 years, Occ: Agriculture,
R/o. : Pimpalgaon Walan, Tq. Phulambri,
Dist. Aurangabad.
3. Yogesh s/o Shivaji Shirsath,
Age: 30 years, Occ: Agriculture,
R/o. : Pimpalgaon Walan, Tq. Phulambri,
Dist. Aurangabad.
4. Balu s/o Kacharu Wahafule,
Age : 50 Years, Occ: Agriculture,
R/o. : Pimpalgaon Walan, Tq. Phulambri,
Dist. Aurangabad.

... Respondents

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Advocate for Petitioner : Mr. Rahul G. Joshi
Advocate for Respondent Nos. 1 to 4 : Mrs. Pooja V. Langhe

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 24th NOVEMBER, 2021

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with

the consent of the parties.

2. This petition impugns the order dated 06-10-2020 passed by the District Judge-11, Aurangabad, below Exhibit-18 in M.C.A. No.64/2020, thereby setting aside the temporary injunction order passed by the Joint Civil Judge, Junior Division, Phulambri, below application at Exhibit-5 in R.C.S. No.16/2020 in favour of the petitioner.

3. Brief facts leading to this petition are as follows:

The petitioner is father-in-law of respondent No.1 and respondent Nos. 2 to 4 are paternal relatives of respondent No.1. The petitioner, on 01-07-2003 purchased property bearing Gram Panchayat No.126, admeasuring 2000 sq. ft. situated at village Kanhori, Tal. Phulambri, Dist. Aurangabad (for short 'suit property') from his own income earned from private service in Zalani Tools, Aurangabad.

4. Respondent No.1 is married to the elder son of the petitioner namely Babasaheb Mhaske on 22-05-2010. The marital discord started between the husband and wife – respondent No.1 after some days of marriage, which led to filing of various proceedings by respondent No.1. H.M.P No.288/2012 seeking restitution of conjugal rights was filed by respondent No.1 which was allowed by 7th Joint Civil Judge, Senior Division, Aurangabad, by order dated 09-12-2014. Respondent No.1 also filed proceedings under the Protection Of Women

From Domestic Violence Act, 2005 bearing Cri. M.A. No.1526/2012, which was allowed on 15-06-2017, wherein a direction is given to the petitioner, husband of respondent No.1 and others not to cause domestic violence and not to prohibit respondent No.1 from entering into the shared household. The said decision in Cri. M.A. No.1526/2012 was challenged by the husband of respondent No.1 by filing appeal bearing PWDVA APPEAL No.131/2017. In the said appeal compromise pursis was filed by respondent No.1 and her husband Babasaheb, wherein it is mentioned that respondent No.1 along with her husband Babasaheb and minor son Omkar are staying together at T.V. Center, Hudco, Aurangabad. It is further mentioned in the pursis that the said proceeding bearing bearing PWDVA APPEAL No.131/2017 is withdrawn by the husband of respondent No.1. Respondent No.1 also agreed to withdraw proceedings bearing PWDVA NO.217/2017 filed by her against the husband.

5. The petitioner filed R.C.S. No.16/2020 seeking injunction against respondents contending that the suit property is his self acquired property and defendants/respondents shall not interfere in his peaceful possession. In the said suit, application seeking temporary injunction at Exhibit-5 was filed. The respondents appeared and resisted the suit. The trial Court allowed temporary injunction application. The respondents

challenged the order of trial Court by filing M.C.A. No.64/2020, which came to be allowed by the District Court and the temporary injunction order passed by the trial Court was set aside. This order is impugned in the present petition.

6. Heard the learned advocate for petitioner and the learned advocate for respondent Nos. 1 to 4.

7. Learned advocate for petitioner strenuously submitted that the suit property is a self acquired property of the petitioner and would not fall within the definition of shared household. Considering the relevant record the trial Court rightly granted injunction in favour of the petitioner and the appellate Court has committed an error in upsetting order passed by the trial Court. In support of his contentions, he relied on the decision of the Punjab And Haryana High Court in **Varinder Kaur Vs. Jitender Kumar and Another**, in R.S.A. No. 4398 of 2016.

8. Per contra, the learned advocate for respondents vehemently submitted that the order passed in favour of respondent No.1 in Cri.M.A. No.1526/2012 is still in operation and the same has become final. In the Hindu Marriage Petition filed by respondent No.1 seeking restitution of conjugal rights, decree for restitution of conjugal rights is passed in favour of respondent No.1 and she is allowed to join

company of her husband. According to her, the matrimonial home of respondent No.1 is at Kanhuri and not at Aurangabad. She, therefore, submitted that the appellate Court has rightly considered the record and was justified in setting aside the temporary injunction order passed by the trial Court. She, therefore, submits that there is no substance in the writ petition and the petition is liable to be dismissed.

9. The sale deed of the suit property purchased by the petitioner is placed on record at Exhibit-A from which prima facie it appears that the petitioner has purchased the said property and the same is his self acquired property. It is also not in dispute that compromise was arrived at between respondent No.1 and her husband and it is specifically mentioned in the compromise pursis that respondent No.1, her husband along with minor son Omkar are staying at T.V. Center, Hudco, Aurangabad. In terms of the said compromise, respondent No.1 agreed to withdraw the proceedings filed against the husband Babasaheb.

10. It is, therefore, clear that the suit property is purchased by the petitioner by a registered sale deed and prima facie, it is his self acquired property. Though respondent No.1 tried to contend before the trial Court that the suit property is a joint family property the said contention is prima facie unacceptable, in view of the registered sale

deed placed on record by the petitioner.

11. Respondent No.1 further tried to contend that the petitioner along with his wife and divorced daughter stays at Aurangabad in a flat at Mayur Park. However, the said contention was not rightly accepted by the trial Court in view of the Form No.8, submitted by the petitioner, which shows that the petitioner is staying in the suit property. The trial Court has observed that as per the documents placed on record by respondent No.1 she is staying at CIDCO, Aurangabad. The petitioner was constrained to file suit seeking injunction against respondent No.1 as respondent No.1 along with respondent Nos. 2 to 4 illegally entered in the suit property on 13-05-2020 and abused, manhandled and threatened the petitioner and by breaking the lock of a room have stolen cotton, gold ornaments and cash. The petitioner has lodged a police complaint about this incident on 14-05-2020. The copy of the complaint is placed on record before the trial Court. Considering the documents placed on record and after hearing the parties the trial Court has rightly came to the conclusion that the balance of convenience is in favour of the petitioner and the petitioner has established prima facie case and if the injunction is not granted in favour of the petitioner irreparable loss will be caused to him.

12. The learned appellate Court has lost sight of the fact that

after the decision in Cri.M.A. No.1526/2012, PWDVA APPEAL No.131/2017 was filed before the District Court in which a compromise was recorded and there is a specific averment in the joint compromise pursis that respondent No.1 along with her husband and minor son are staying at TV Center, Hudco, Aurangabad. The appellate Court has further failed to consider that by the said joint compromise pursis respondent No.1 agreed to withdraw all the proceedings against the husband. The appellate Court has committed an error in coming to the conclusion that the suit property falls within the definition of shared household. Prima facie, since the suit property appears to be self acquired property of the petitioner, the same does not fall within the definition of shared household as stated in Section 2(s) of the Domestic Violence Act.

13. In **S.R. Batra Vs. Taruna Batra**, reported in (2007) 3 SCC 169, the Hon'ble Apex Court has held:-

“the wife could claim the right of residence in terms of Section 17(1) of the Act, only in a ‘shared household’ and a ‘shared household’ would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. It was held that the house which was the exclusive property of the mother-in-law could not be said to be a ‘shared household’ entitling the daughter-in-law to claim a right of residence therein.”

14. The decision in case of **S.R. Batra** (supra) supports the case

of the petitioner. In the light of the above ratio respondent No.1 has no right to live in the self acquired property of the petitioner. The impugned order passed by the appellate Court is, therefore, unsustainable in law and facts of the present case.

15. The appellate Court has recorded erroneous findings contrary to the record and has taken into consideration irrelevant aspects and has ignored relevant aspects. In that view of the matter, writ petition deserves to be allowed. Hence, the following order:-

ORDER

- (I) Writ petition is allowed in terms of prayer clause 'C'.
- (II) The impugned judgment and order passed by the District Judge-11, Aurangabad, below Exhibit-18 in M.C.A. No.64/2020 is hereby quashed and set aside.
- (III) Order passed by the Civil Judge, Junior Division, Phulambri, in R.C.S No.16/2020 is hereby confirmed.
- (IV) Rule is made absolute in the above terms with no costs.
- (V) Needless to mention that the observations made in this judgment are prima facie and the trial Court shall not be influenced by them while deciding the suit on merits.

(NITIN B. SURYAWANSHI, J.)