

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.3808 OF 2020
IN SA/706/2011
WITH CA/11785/2021 IN SA/706/2011

NILKANTH S/O KISANRAO SURYAWANSHI
VERSUS
BABRUWAN S/O KISANRAO SURYAWANSHI AND ORS

...
Mr. P. V. Mandlik i/b Mr. Amol S. Gandhi, Advocate for applicant.
Mr. M. L. Dharashive, Advocate for respondent No.1.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27.10.2021

ORDER :-

1. Civil Application No.3808 of 2020 has been filed by the original plaintiff to restrain the respondents from changing the nature of the suit property/creating any third party interest and Civil Application No.11785 of 2021 has been filed for allowing the applicant to produce certain documents in support and reiterating the prayer in Civil Application No.3808 of 2020.

2. The second appeal came to be admitted by this Court on 17.10.2013 by framing substantial questions of law. The present appellant had filed Regular Civil Suit No.399 of 2003 before Joint Civil Judge Junior Division, Ausa, Dist. Latur for partition and separate

possession. The suit was dismissed on 02.09.2006. Thereafter, it appears that both the parties i.e. original plaintiff filed Regular Civil Appeal No.133 of 2006 and original defendant Nos.2 and 3 filed Regular Civil Appeal No.142 of 2006. Both the appeals were heard together and learned Adhoc District Judge-3, Latur dismissed both the appeals, however, this Court, as aforesaid, admitted the appeal by framing substantial questions of law. The plaintiff is claiming that the suit property is ancestral property and also there is a point involved as to whether memorandum of partition Exhibit-63 requires registration.

3. Heard learned Advocate Mr. P. V. Mandlik holding for learned Advocate Mr. A. S. Gandhi for applicant and learned Advocate Mr. M. L. Dharashive for respondent No.1. In order to cut short, it can be said that both of them have made submissions in support of their respective contentions.

4. The first and the foremost fact is that when the plaintiff is claiming share in the suit property and on the basis of that he is seeking partition and separate possession in respect of the suit land Survey No.63 admeasuring 1 H 61 R situated at village Budhoda, Tq. Ausa, Dist. Latur and the appeal is admitted, then definitely the nature of the property should remain in the same way or *status quo* of the property

needs to be maintained. Along with Civil Application No.11785 of 2021, documents have been produced, which shows that respondent No.2 is claiming exclusive ownership and possession and it is stated to have been agreed to be sold. A newspaper publication has been given on behalf of the proposed purchaser inviting objections. Further, it appears that the present appellant has taken objection by publishing the objection stating that the appeal is pending. A sale-deed is also produced, which appears to have been executed on 13.03.1980 by the father of present appellant and respondent Nos.1 and 2 with one Vyankat Kasle. It appears that from Vyankat Kasle the father of present appellant and respondent No.2 purchased the suit land. From the said publication inviting objections filed at Exhibit- 'X-1' dated 08.10.2021 in Daily Dainik Lokmat Latur edition, it appears that respondent No.1 has intention to create third party interest and, therefore, he needs to be restrained in view of admission of the second appeal. Hence, the following order :-

ORDER

- I) Civil Application No.11785 of 2021 stands allowed in terms of prayer clause 'B' till the hearing and final disposal of Second Appeal No.706 of 2011.

II) In view of more elaborate application and thereafter, restricting the prayer to respondent No.1 only by the applicant – appellant, Civil Application No.3808 of 2020 stands disposed of.

[SMT. VIBHA KANKANWADI, J.]

scm