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

WRIT PETITION NO. 4047 OF 2021

**PRABHAKAR DATTARAM MANE
AND ANR**

....PETITIONERS

V/s.

SHIVAJI LAXMAN MANE

.....RESPONDENT

Mr. Sumit Kothari for the Petitioners

Mr. Jay Vora i/b Mr. Pramod Tambe for Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: AUGUST 23, 2021.

P.C.:

1] Vide order dated 11/08/2021, this court has already recorded that the petitioner-defendant is restricting his claim in this petition to the extent of land survey no. 31/1 which was purchased by respondent vide sale deed dated 12/06/2017. Hence, it is clarified claim in this petition is restricted to the extent of land survey no. 31/1 only for the purpose of claiming decision on the issue of sustainability of order of temporary injunction. The claim in the suit has to be adjudicated on merits in relation to property therein i.e.

survey no. 31/1 and 32/10.

2] This court vide last reasoned order dated 11/08/2021 recorded submissions of learned counsel for respondent-plaintiff that the purchase of property from defendant-co-sharer was based on revenue entries in 7/12 extract for which the basis was Aanewari as was settled almost 30 years back. As such, this Court has called upon counsel for respondent-plaintiff to demonstrate whether such revenue entries were based on partition effected by metes and bounds or are just paper entries, to which he has fairly conceded that no such partition could be noticed from the documents which are available with respondent-plaintiff.

3] In the aforesaid background, if the orders impugned passed by courts below thereby granting injunction against a co-sharer i.e. the petitioner is considered, same in my opinion, is not sustainable as the party who is admittedly a co-sharer in the suit property by way of order of temporary injunction cannot be restrained from entering in the joint family property, which is part of common hotch potch .

4] Hence, temporary injunction order in relation to land survey no. 31/1 is hereby stands modified. Same is restricted only to the extent of land survey no. 32/10 and not in relation to survey no. 31/1. Petition as such stands partly allowed in the above terms.

5] Findings recorded herein are based on prima facie opinion formed on the basis of documents produced. As such, same shall not prejudice either of the parties to the suit while deciding the same on merits.

[NITIN W. SAMBRE, J.]