

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

WRIT PETITION NO. 5092 OF 2021

Shri. Shrikant Dadoba Tavdare
since deceased through Lrs. .. Petitioners
V/s.

Mr. Ravikiran Mohan Tavdare & Ors. ..Respondents

Mr. S.P. Chavan for the Petitioners.

CORAM : C.V. BHADANG, J.

DATE : 06 SEPTEMBER, 2021

PC.

1. The challenge in this petition is to the order rejecting the application for temporary injunction filed by the Petitioners/Plaintiffs. The Petitioners had sought an injunction restraining the Respondent No.1 from creating third party interest in the suit property or effecting any change or making construction thereon.

2. The suit property happens to be Survey No. 1216 of village Shirol, Taluka Jaisingpur, District Kolhapur. The case made out in the plaint is that Dadoba Tavdare (since deceased), who is the father of the plaintiff Shrikant Tavdare (since deceased) had executed a

Will dated 05 February 1982 in respect of 70 x 45 ft land from out of City Survey No. 1216 in favour of his wife Ratnabai. According to the Petitioner, Ratnabai had purchased 352.2 sq. meters of land from Dadoba Tavdare and 162.26 sq. mtrs of land from Respondent No.3 Mohan Tavdare. It is the material case that as per Will dated 05 February 1982 Ratnabai had not become the absolute owner of the suit property which was subject matter of the Will. By virtue of the said Will, the property was given to her only during her lifetime after which the said property will go to Respondent No.3 Mohan. It was contended that Dadoba expired on 30 August 1983 while Ratnabai passed away on 20 October 2010. During her lifetime, Ratnabai executed a Gift Deed dated 23 April 2004 in favour of Respondent No.1, who is the son of Mohan Tavdare. The Plaintiff filed the suit for a declaration that the said Gift Deed is illegal and null and void and for separation of his 1/7th share.

3. The Petitioner filed an application for temporary injunction which was rejected by the Trial Court on 06 May 2019 which order has been confirmed in Appeal by the learned District Judge at Jaisinghpur in Misc. Civil Application No. 23 of 2019 vide Judgment and Order dated 20 March 2020.

4. I have heard the learned counsel for the Petitioner and perused record.

5. It is not in dispute that the Petitioner has not challenged the Will executed by Dadoba in favour of his wife Ratnabai on 05 February 1982. All that is contended on behalf of the Petitioner is that by virtue of the said Will Ratnabai had not become absolute owner and she was entitled to enjoy the property only during her lifetime after which the property was go to Mohan. Thus, going by the case of the Plaintiffs under the Will, the property was not to come to the Plaintiffs. It is thus, difficult to see as to how the Petitioners could be aggrieved by the Gift Deed executed by Ratnabai when the same has not been challenged by Mohan. It further appears that the Gift Deed of the year 2004 is challenged by filing a suit in the year 2019. Considering the over all circumstances, no exception can be taken to the concurrent finding recorded by the courts below refusing to grant injunction as prayed. The learned District Judge has observed in paragraph 13 of the impugned Judgment that issue whether the Petitioner has 1/7th share in the property as mentioned in paragraph 1(b) of the plaint would be decided during the course of the trial.

6. Thus, the petition is without any merit and is accordingly dismissed.

7. The observations herein are of a prima facie nature for the limited purpose of deciding the prayer for temporary injunction. The Trial Court shall not be influenced by the same at the trial of the suit.

C.V. BHADANG, J.