

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1786 OF 2020

Ajit Ashok Bhosale & Another Petitioners

Vs.

Vidya Prasad Jadhav & Ors. Respondents

Mr. A.V. Anturkar, Senior Counsel i/by Mr.Yatin Malvankar for
Petitioners.

Mr. P.S. Dani, Senior Advocate i/by Mr. Sarang S. Aradhye for
Respondent No. 1.

Mr. Shailendra S. Kanetkar for Respondent Nos. 2 to 5.

Coram : NITIN W. SAMBRE, J.

Date : 1st SEPTEMBER, 2021

P.C.:

1. This Petition is by Defendant No.1 to a Suit for partition and separate possession being Regular Civil Suit No. 61 of 2018 pending on the file of Civil Judge, Junior Division, Mohol, District Solapur. Defendant No. 2, Mrs. Shobha Ajit Bhosale is wife of Defendant No. 1, who are the Petitioners herein, whereas Defendant Nos. 3 and 4 and

Plaintiff are the sons and daughter of Defendant Nos. 5 and 6, who are husband and wife.

2. In the aforesaid Suit, part of the property appears to have been acquired resulting into deposit of compensation. The Respondent-Plaintiff sought 1/6th share in the suit property. On 9th September, 2019, the Court of Civil Judge, Junior Division, Mohol rejected the prayer for grant of temporary injunction against the Petitioners, thereby claiming relief of not to create any third party interest and not to receive amount of compensation till Suit is decided on merits.

3. The application for temporary injunction was rejected on 9th September, 2019. The Respondent-Plaintiff preferred Miscellaneous Civil Appeal No. 108 of 2019 on the file of District Judge, Solapur, which Appeal came to be allowed vide impugned order dated 19th December, 2019. As such, this Writ Petition.

4. The contention of Shri. Anturkar, learned Senior Counsel appearing for the Petitioners/Defendant Nos. 1 and 2 are, the parties to

the Petition have entered into a family arrangement and accordingly on 17th October, 2007, in exercise of powers under Section 85 of the Maharashtra Land Revenue Code, consent terms were recorded and revenue entries were accordingly mutated. He would further claim that in view of aforesaid partition, the Plaintiff's claim for temporary injunction ought not to have been allowed. Further contention is, the provisions of Section 6 of the Hindu Marriage Act contemplates the partition by decree of the Court or by registered deed.

5. In the aforesaid background, he claims that once the relationship between the parties is not disputed, the Petitioners are entitled to 1/6th share. That being so, while ordering the injunction, the Court below should have passed an order thereby protecting interest of the Petitioners also. Further contention of Mr. Anturkar are if the Petitioners are permitted to withdraw 1/6th amount of compensation, the parties to the petition will not be put to prejudice.

6. While countering aforesaid submissions, learned counsel appearing for the Respondents would urge that the entitlement of the

Petitioners to the extent of 1/6th share is itself under the doubt, as there is counterclaim by the brothers. It is claimed that the withdrawal of amount cannot be sought in the present proceedings unless rights of parties are adjudicated and that being so, the Petition is liable to be dismissed for want of merits.

7. As far as contention about partition under Section 85 of Maharashtra Land Revenue Code, same is borne out of the record to be effected on 17th October, 2007. However, the fact remains that the Plaintiff/Respondent No. 1 is not party to the said proceedings.

8. In view of amendment to Hindu Succession Act, particularly Section 6 with retrospective effect as is interpreted by the Apex Court in the matter of **Vineeta Sharma Vs. Rakesh Sharma and Others**, reported in **(2020) 9 Supreme Court Cases, page 1**, the Petitioners' entitlement to the partition/share in the ancestral property can be prima facie inferred.

9. As such the earlier arrangement pursuant to the provisions of Section 85 of the Maharashtra Land Revenue Code is not binding on the Plaintiff-Respondent.

10. It is further required to be noted that merely because the Plaintiff has claimed 1/6th share in the property, that by itself does not entitle the Respondent to claim the share to the extent of 1/6th as it could be gathered from the record that the brothers interse are fighting for their share over the suit property and there is no admission of 1/6th share of the Petitioners in the suit property.

11. As far as the claim for passing of an order of equitable relief is concerned, the Plaintiff is neither permitted to withdraw the amount of compensation nor she, unless her share is demarcated by meets and bounds can sell or transfer the same. That being so, the claim that the Petitioners are entitled for equitable relief in the matter is also liable to be rejected.

12. The issue as regards the apportionment of compensation also cannot be gone into at this stage of the proceedings. In that view of the matter, no case for interference is made out. The Writ Petition as such fails, dismissed.

(NITIN W. SAMBRE, J.)