

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

WRIT PETITION NO.34 OF 2022

Murlidhar Kishanrao Shinde

Age: 65 yrs, Occ. Agri

R/o Ganeshpar, Parli Tq. Parli

Dist. Beed.

... Petitioner

Versus

1. Mukind Tukaram Shinde
Age 60 yrs occ Agri

2. Ahilyabai Tukaram Shinde
(Now dead)

3. Prayagbai Tukaram Shinde
(Now dead)

4. Sojarbai Datta Shinde
Age Major occ HH

5. Shivaji Yadav Randive
Age 45 yrs occ Agri

All r/o Shirshi(Bu) Tq. Sonpeth

Dist. Parbhani.

... Respondents

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Advocate for Petitioner : Mr. Vivek Vasantrao Bhavthankar

Advocate for Respondent Nos. 1, 4 & 5 : Mr. S. S. Gangakhedkar

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 02nd FEBRUARY, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

2. This petition takes exception to the order dated 23-12-2021,

passed by the learned Ad-hoc District Judge, Gangakhed, below Exhibit-24 in Regular Civil Appeal No.29/2018, thereby rejecting application for stay filed by the petitioner.

3. The petitioner is the original defendant No.2 in Regular Civil Suit No.7/2013 filed by respondent Nos. 1 to 3 for partition and separate possession of their ancestral property. The suit came to be decreed by order dated 20-02-2016. The sale deed executed in favour of the petitioner – original defendant No.2 was held to be not binding on the plaintiffs.

4. The petitioner being aggrieved by the said decree preferred regular civil appeal along with delay condonation application. The delay was condoned and the appeal was registered as R.C.A. No.29/2018. In the said appeal, application Exhibit-24 is filed by the petitioner seeking stay to the execution of the decree. The said application is rejected by the first appellate Court. Hence, the present writ petition.

5. Heard the learned advocate for petitioner and the learned advocate for respondents.

6. The learned advocate for petitioner submits that during the pendency of application Exhibit-24 there was status quo order passed in

favour of the petitioner. He submits that substantially the appeal filed by the petitioner would be rendered infructuous in case stay is not granted in favour of the petitioner. He submits that he has good grounds and he has hopes to succeed in the appeal and therefore, since the execution proceeding is going on, the same is required to be stayed.

7. On the other hand, the learned advocate for respondents strenuously opposed the prayer of the petitioner. By pointing out a specific statement made in the affidavit-in-reply filed by the respondents, he submitted that at no point of time interim order of status quo was passed in favour of the petitioner and this is an incorrect statement made by the petitioner. Further, by relying on the decision in *Gitabai Bhagwan Pardeshi @ Geetabai Sanjay Rajput Vs. Hirkanbai Aadhar Patil and Others*, reported in *2020(6) Mh.L.J. 432*, he submits that the petitioner has failed to make out any case for grant of status quo order in his favour. He supports the impugned order passed by the appellate Court.

8. The petitioner – original defendant No.2 has purchased a part of the suit property which is directed to be partitioned and the trial Court has held that defendant No.1 Sojarabai has executed a sale deed in favour of the present petitioner – defendant No.2. It was not on

account of joint family necessity and defendant No.1 had no authority to execute the sale deed in favour of the petitioner. During the pendency of the suit, defendant Nos. 1 and 2 though appeared but they did not file any written statement. The trial Court has decreed the suit.

9. The learned advocate for petitioner was not in a position to substantiate from record his statement that status quo order was passed in favour of the petitioner. When asked, he submitted that, on instructions of the petitioner the said statement was made. However, he is unable to point out from record that status quo order was passed in favour of the petitioner. In this view of the matter, the statement of the respondents in affidavit-in-reply that no such status quo order was ever passed in favour of the petitioner is liable to be accepted. Admittedly, the decree is passed for partition and separate possession. In that view of the matter, even if the decree is allowed to be executed the land in question would be partitioned amongst the plaintiffs and defendants and even if the petitioner succeeds ultimately in the appeal, the petitioner will be entitled to claim the land falling to the share of his vendor i.e. defendant No.1. In that view of the matter, there is no need to grant status quo in favour of the petitioner.

10. The appellate Court has passed a well reasoned order and has arrived at a conclusion that the petitioner has failed to make out a sufficient cause for grant of stay in his favour. No error or illegality is found in the impugned order.

11. The ratio in *Gitabai Bhagwan Pardeshi* (supra) supports the case of the respondents.

12. For the aforestated reasons, no merit is found in the challenge raised by the petitioner. The writ petitioner, being devoid of merits, is dismissed. Rule is discharged. No costs.

(NITIN B. SURYAWANSHI, J.)

SVH