

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

WRIT PETITION NO.11493 OF 2021

PANDHARINATH AHILAJI DEVIKAR
VERSUS
AHILU ALIAS AHILAJI PARAJI DEVIKAR AND OTHERS

...

Advocate for Petitioners : Mr. Yadkikar Amit A
Advocate for Respondent Nos.1, 2, 4 to 6: Mr. Vinod Jadhav h/f
Mr. A. V. Hon

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 20th September, 2022

PER COURT :-

1. In a suit filed for partition and separate possession of the ancestral properties, application - Exhibit-5 filed by the petitioner is rejected by the Trial Court and the said rejection is confirmed by the Appellate Court. The petitioner is aggrieved by these orders.
2. I have duly considered the submissions advanced by the learned Advocate for the petitioner and the learned Advocate for respondent nos.1, 2, 4 to 6. In spite of service of notice, respondent nos.3, 7 & 8 have not caused appearance.
3. Interim injunction is refused to the petitioner on the ground that the petitioner has failed to object the mutation entry no.262

and the petitioner has failed to object to the sale effected in the year 1997 by respondent no.3 in favour of respondent nos.7 & 8, so also the petitioner has also failed to object to the mutation entry no.1551.

4. Both the Courts have concurrently held that the suit properties are ancestral properties and respondent/defendant no.1 has partitioned the said properties and distributed them equally amongst family members i.e. petitioner/plaintiff and respondent nos.1, 2 & 3. Therefore, both the Courts have arrived at a conclusion that the petitioner has failed to prove prima facie case and there is no balance of convenience in favour of the petitioner. If the injunction is granted, irreparable loss would be caused to the defendants, rather than to the petitioner.

5. Having considered the facts of the present case and the pleadings of the parties and on going through the impugned orders, this Court is of the opinion that the Trial Court ought to have granted relief to the effect that the defendants shall not create any third party interest in the suit properties. If any third party interest is created in the suit properties, the same will add to the further complications and will lead to multiplicity of the proceedings. The impugned order therefore needs to be modified.

7. The writ petition is partly allowed. The impugned order passed by the Trial Court below Exhibit-5 is modified to the effect that the defendants are directed not to create any third party interest in the suit properties.

[NITIN B. SURYAWANSHI, J.]

Sameer