

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

WRIT PETITION NO.12823 OF 2021

ASHOK VITTHAL TRIMBAKE AND ANOTHER
VERSUS
MARUTI NAMDEO TRIMBAKE AND OTHERS

...

Advocate for the Petitioners : Shri Thombre S.S.
Advocate for the Respondents : Shri Bide Dnyaneshwar A.

...

CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 05th January, 2022

Per Court:

1. The petitioners are the original plaintiffs, who have filed the suit being RCS No.183/2017 against the defendants for partition and perpetual injunction in respect of the suit properties mentioned in the plaint. The plaintiffs also filed the application below exhibit-5 seeking temporary injunction restraining the defendants from creating any third party interest and selling the suit property. The defendants also moved the application exhibit-48 seeking injunction against the plaintiffs.

2. The application filed by the plaintiffs came to be rejected by recording that prima facie case is in favour of the defendants and exhibit 48 filed by the defendants came to be allowed. The plaintiffs were restrained from creating any obstruction in the property at Survey Nos.276/1 and 276/2 in possession of the defendants, is the injunction

granted by the Trial Court on 14.12.2020.

3. The aforesaid finding has been upheld by the Appellate Court by referring to the sale deed of the year 1970 and the partition effected in the year 2002 along with the mutation entries based on the said documents.

4. The learned counsel for the respondents has invited my attention to another document, which is signed by the father of the plaintiffs on 21.10.1971 wherein, he has specifically referred to the property in Survey No.276 and irrigated land admeasuring 14 Acres and 27 Gunthas and he has solemnly affirmed the said document stating that the said property is purchased by his two brothers viz. Namdeo and Changdeo from their own earnings and he has not contributed for purchasing the said property. Admissibility of the said document can be determined at the time of trial. Prima facie, it is revealed that the defendants are in possession of the suit property since 1970. Based on this reasoning, the appeal has been dismissed by the learned District Judge affirming the findings rendered by the Trial Court.

5. I see no legal infirmity in the impugned order, which warrant any interference at the instance of this Court. However, since the suit instituted by the plaintiffs is filed in the year 2017, the learned Trial Judge is directed to culminate the proceedings in the suit within a period of one year from today.

6. The learned counsel for the respondents also categorically makes a statement that the defendants are not desirous of creating third party interest in the suit property till the disposal of the suit.

7. Recording the aforesaid statement, this Writ Petition is disposed of.

8. Needless to state, the observations made aforesaid are prima facie in nature and shall not bind the Trial Court while determining the suit.

kps

(SMT. BHARATI H. DANGRE, J.)