

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 WRIT PETITION NO.11674 OF 2022

WITH WP/12017/2022

VAIJNATH ALIAS BABURAO VYANKATI TATIPAMAL AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA THROUGH THE DISTRICT COLLECTOR
AND OTHERS

...

Advocate for Petitioners : Mr Shailendra S. Gangakhedkar

AGP for Respondent/State : Mrs G.L. Deshpande

Advocate for Respondent No.3 : Mr G.L. Kedar

CORAM : SANDEEP V. MARNE, J.

DATE : 8th DECEMBER, 2022

PER COURT :

1. Both the writ petitions are filed by rival parties challenging the same Judgment and order dated 12th September, 2022 passed by District Judge, Ambajogai thereby, partly allowing the appeal filed by the original plaintiff clamping temporary injunction against defendant Nos. 3 and 4 from alienating the landed properties bearing Gut No. 126, 128 and 129. So far as the house properties are concerned, the District Court has maintained the order passed by the trial court not putting any restrictions on the same. Plaintiff in the suit is son of defendant No. 3 from earlier marriage and defendant No. 4 is the second wife of defendant No.3. Plaintiff is claiming ½ share in the suit properties. It is an admitted position that defendant No.3 has total 7 sisters from both the marriages, who are not included in the suit.

2. Defendant Nos. 3 and 4 are aggrieved by the order of the District Court dated 12.09.2022 to the extent of restraining them from alienating the landed properties bearing Gut Nos. 126, 128 and 129. The plaintiff on the other hand, aggrieved by order dated 12.09.2022 to the extent that no injunction is granted against the house property.

3. Mr Gangakhedkar, appearing for the original defendant Nos. 3 and 4 submits that they intend to alienate only 99 R land out of Gut No. 129. Even if the suit of plaintiff is fully decreed, defendant Nos. 3 and 4 would be entitled to much higher portion of land than 99R. He therefore, requests for modification of the order dated 12.09.2022 by permitting defendant Nos. 3 and 4 to alienate 99R land out of Gut No. 129.

4. Mr Gangakhedkar, is agreeable to the position that the rest of the landed properties excluding land admeasuring 99R from Gut No. 129, shall not be alienated by respondent Nos. 3 and 4 during the pendency of the suit.

5. Mr Kedar, learned counsel appearing for the plaintiff, after taking instructions from the plaintiff, who is present in the Court and he is agreeable to this arrangement.

6. So far as the house properties are concerned, Mr Gangakhedkar, on taking instructions from his clients, makes a statement that defendant Nos. 3 and 4 shall not alienate any of the house property without taking prior leave of the trial court.

7. Considering the above position, these petitions can conveniently be disposed of by issuing following directions.

ORDER

- (1) The Judgment and order dated 12th September, 2022 passed by the District Judge-3, Ambajogai in Misc. C.A. No. 94/2022 is modified to the following extent :-
- (i) Defendant Nos. 3 and 4 shall be entitled to alienate land admeasuring 99R out of Gut No. 129 situated at village Dautpur Tal.Parali Vaijnath, Dist. Beed and order dated 12.09.2022 passed by the District Judge shall not be applicable to such alienation.
- (ii) Except land admeasuring 99R out of Gut No.129, the defendant Nos. 3 and 4 shall remain temporarily restrained from alienating the rest of the suit land.
- (iii) Defendant Nos. 3 and 4 shall not alienate any of the house properties described in the suit without prior leave of the trial court.
- (2) With the above directions, the writ petitions are disposed of.

[SANDEEP V. MARNE, J.]

mta