

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4196 OF 2022

Shivaji Shankar Dorle (Bedge)

.. Petitioner

Versus

Sanjay Shankar Dorle (Bedge) & Ors.

.. Respondents

-
• Mr. Amitkumar Damodar Sale for the Petitioner

.....
CORAM : MILIND N. JADHAV, J.

DATE : APRIL 13, 2022

P.C.:

1. Heard.

2. Petitioner - Shivaji Shankar Dorle and Respondent No.1 - Sanjay Shankar Dorle are two brothers having 50% share in the suit properties described in paragraph 3 of the Writ Petition. Petitioner filed suit for seeking partition and separate possession of the suit properties from Respondent No. 1 being Regular Civil Suit No. 424 of 2019 before the Civil Judge Senior Division at Sangli. The necessity to file the said suit had arisen because Respondent No. 1 had sold his share out of some of the suit properties to Respondent Nos. 2 and 3.

3. In the aforestated Civil Suit at Sangli, Respondent Nos. 4A and 4B who are the sons of Respondent No. 1 filed an Interim Application

marked as Exhibit 27 seeking impleadment as proper and necessary parties to the suit contending that the suit properties are ancestral properties and the Respondent Nos. 4A and 4B have an inherent right / share in the suit property by birth. The learned trial court allowed the Application filed by Respondent Nos. 4A and 4B by the impugned order.

4. The Petitioner has challenged the impugned order dated 30.11.2021 *inter alia* on the ground that Respondent Nos. 4A and 4B claimed their rights in the suit property through their father i.e. Respondent No. 1 and therefore do not have locus in the partition suit.

5. The impugned order records that Respondent Nos. 4A and 4B have asserted that their right and entitlement in the suit properties is required to be decided in the pending civil suit filed by the Petitioner. *Prima facie* this contention of Respondent Nos. 4A and 4B is completely erroneous and incorrect in law. Nothing prevents Respondent Nos. 4A and 4B to file a separate suit for seeking their entitlement and share in the suit properties if it is their case that the suit properties are ancestral properties derivated onto the Petitioner and Respondent No. 1. Reading of the impugned order does not refer to any documentary evidence produced by Respondent Nos. 4A and

4B to show that the suit properties are ancestral properties and not the joint properties of the Petitioner and Respondent No.1.

6. In view of the above, Respondent Nos. 4A and 4B shall be at liberty to file a separate suit for seeking their right, entitlement and share in the purported ancestral properties which according to the said Respondents are the suit properties.

7. The suit filed by the Petitioner is simplicitor for effecting 50% partition and share of the suit properties and not for entitlement or declaration. In any event and admittedly Respondent Nos. 4A and 4B shall be otherwise entitled to the share of Respondent No. 1 who is their father. However, if Respondent Nos. 4A and 4B are required to agitate their right, entitlement and share in the ancestral properties, they are at liberty to file appropriate proceedings in the appropriate civil court having original jurisdiction in respect of their right to the suit properties.

8. In view of the above directions and findings, the impugned order dated 30.11.2021 stands set aside and the Writ Petition is disposed of accordingly.

[MILIND N. JADHAV, J.]