

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6795 OF 2022**

Bhimrao Jijaba Yadav

.....Petitioner

V/s.

Babaso Sayajirao Yadav
and Ors.

....Respondents

Mr. P.D.Dalavi i/by Mr. C.P.Yadav, Advocate for the Petitioner.
Mr. Sandesh D. Patil with Ms. Divya Pawar i/by Mr. Sachin Hande, Advocate for the respondent no.1.

CORAM : SANDEEP K. SHINDE, J.
FRIDAY, 7TH OCTOBER, 2022.

P.C. :

1. Heard learned counsel for the Parties.
2. Babaso Yadav and others, instituted injunction Suit, against petitioner/defendant no.1, to restrain him from disturbing their possession in the Suit Property, more particularly, described in paragraph 1B of the plaint. Pleadings in the plaint, Revenue entries and assessment extracts i.e. Village Form 8 in respect of Suit Property indicate that, house situated therein and area around it was in possession of plaintiff's father since long before instituting the suit. In paragraph 4 of the plaint, plaintiffs would assert and claim previous partition amongst the family members, wherein Suit Property has fallen to their share. It appears that the concerned,

Gram Panchayat permitted plaintiff to construct a new house on the Suit Land by dismantling old one. Plaintiffs were apprehending obstruction at the hands of the defendant no.1, whilst constructing house. Therefore, they instituted, subject suit. Pending suit, trial Court, restrained the defendant from obstructing plaintiffs, which order was confirmed in Miscellaneous Civil Appeal. Feeling aggrieved thereby, defendant no.1 has filed this Petition.

3. The orders passed by both the Courts are founded on the evidence, which indicates that the Suit Property was in possession of the plaintiff's father since before institution of the suit in terms of partition amongst family members. Mr. Dalvi learned counsel for the Petitioner/Defendant No.1 disputes this fact and would largely rely on agreement dated 7th May, 1977 executed by and between family members. Mr. Dalvi submitted, in terms of the agreement, Suit Property bearing Gat No.1614, has fallen to the share of the Petitioner-defendant no.1, and that part of the land Gat No.1249 has fallen to the share of the plaintiff's father. Mr. Dalvi submitted that the plaintiff has not disputed partition recorded in this agreement. It is, therefore,

argued that agreement is binding on the parties and as such, both the Courts overlooked this agreement and thereby recorded finding contrary to the evidence on record.

4. Mr. Patil, learned counsel appearing for the Respondent No.1-Plaintiff, on instructions, submitted that the petitioner herein has instituted a suit, on the basis of agreement dated 7th May, 1977 allegedly recording the terms of the partition and that suit is pending for consideration before the Court of competent jurisdiction. Mr. Patil submitted orders recording prima-facie findings being not contrary, but consistent, with the pleadings and evidence, no interference is called for, in the supervisory jurisdiction and thus, urged that petition may be dismissed.

5. Be that as it may, primary evaluation of the evidence, suggests that the partition agreement dated 7th May, 1977 has not been acted upon by the parties at any time. Besides, revenue records have not been altered till date. On the contrary pleadings, indicate plaintiffs and other family members are in possession of respective shares, as per the partition

effected since, time long past. In consideration of the facts of the case, findings recorded by both the Courts below being founded on the documentary evidence on record are neither perverse nor erroneous, I am not inclined to interfere with the impugned order. Petition is dismissed.

(SANDEEP K. SHINDE, J.)