

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3489 OF 2017

Rajendra Alias Anand Vasudev Prabhuzantye ...Petitioner

V/s.

Pradnya Alias Pratibha VI Nayak

Prabhuzantye & Ors.

...Respondents

Mr. Amogh Karandikar for Petitioner.

Mr. Abhijit M. Adagule for Respondent No.1.

Mr. A. R. Patil, APP for Respondent No.4 (State).

CORAM : AMIT BORKAR, J.

DATE : DECEMBER 13, 2022

P.C.:

1. The petitioner who is brother-in-law of applicant in proceedings under the provisions of Protection of Women from Domestic Violence Act, 2005, is challenging the order of injunction granted by Courts below restraining him from alienating or creating third party right in relation to property which is the subject matter of proceedings before the learned trial court.

2. The Courts below based on the material on record recorded a finding that the properties in possession of petitioner are ancestral property. Petitioner raised the contention before the Courts below that the petitioner received the said property in partition, and therefore, the status of property become that of separate property. According to him, once the property becomes

separate property, there cannot be order of injunction as the petitioner become exclusive owner to the extent of share allotted to him in partition.

3. It, *prima facie*, appears from the record that once the husband of the applicant-wife had born after the partition, the status of separate property is changed to that of ancestral property. In the result, husband of the applicant had share in the property. Therefore, Courts below were justified in maintaining the status of the property by restraining the opponents from creating third party rights.

4. At *prima facie* stage of grant of injunction, the material on record is sufficient to hold that the nature of property is ancestral property. However, at the stage of trial, it is open for the petitioner to prove before the Courts below that the properties in possession of the petitioner is self-acquired property or separate property.

5. For the above reasons, the findings recorded by the Courts below cannot be termed as perverse. There is no miscarriage of justice.

6. Therefore, Writ Petition is disposed of in the above terms. No costs.

(AMIT BORKAR, J.)