

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.10903 OF 2022**

Ramchandra Ganpati Dhokare

Decd. Thr. LHRS. Smt. Kamal

R. Dhokare and Anr.

..... Petitioners

Vs.

Bhagoji N. Mane Deshmukh and

Ors.

..... Respondents

Mr. Suraj Kudalkar, Advocate for the petitioners.

Mr. Satish K. Kumbhar, Advocate for the respondents.

CORAM: SANDEEP K. SHINDE, J.

MONDAY, 19TH SEPTEMBER, 2022.

P.C.

1. Petitioner's Regular Civil Suit No.53/2010 for partition was decreed on 30th December, 2019. Clause-6 of the operative order reads as under :

"6. The house property i.e. Grampanchayat Property No.781 be partitioned equitably in accordance with the above declaration of shares by appointing a Court Commissioner and the plaintiff be put in separate possession of his share therein. Preliminary decree to that effect be drawn up accordingly."

2. The petitioner has carried this decree in Appeal and it is pending for consideration. It is petitioner's case that, the suit house was damaged due to cyclone. He relied on the panchanama dated 7th August, 2019. It shows, due to cyclone, damage was caused to the suit house. Admittedly, this fact was not brought to the notice of the trial Court when the judgment and decree was passed in Regular Civil Suit No.53/2010.

3. It appears, the petitioner has been sanctioned loan under the scheme of Central Government for repairing/reconstruction of the suit house, which was allegedly damaged in the cyclone. Accordingly, the petitioner started repairing/reconstructing the house. Therefore, the respondents herein instituted Regular Civil Suit No.6/2011 seeking a restraint order against the petitioner from demolishing or reconstructing the suit house. An application seeking temporary injunction to restrain the petitioner from reconstructing the suit house was granted and confirmed in Misc. Appeal by the District Judge-4, Kolhapur. The legality and correctness of that order is questioned in this Writ Petition. Learned Counsel for the petitioner submits that,

both the Courts below have not considered the panchanama dated 7th August, 2019, which clearly shows that the suit house was damaged in the cyclone. It is submitted that, since the house was substantially damaged, it was necessary to repair and/or reconstruct the same. It is further submitted that, he has carried out the repairs and/or reconstruction at his own cost and consequences.

4. In consideration of the facts stated above, the fact remains that the Decree in the first suit was passed on 30th December, 2019; whereas the suit house was allegedly damaged in cyclone on 7th August, 2019. Admittedly, the petitioner was occupying the suit house and he ought to have brought this fact to the notice of the learned Court while passing the judgment and decree in the suit for partition instituted by him.

5. As a matter of propriety, the petitioner ought to have applied to the trial Court before changing the structure or the nature of the suit house in respect of which the decree was passed on 30th December, 2019. For all these reasons, I

am not inclined to interfere with the impugned order. Writ Petition is dismissed.

6. However, having regard to the facts of the case, the petitioner is granted liberty to file an application before the Appellate Authority seeking permission to repair and reconstruct the suit house. If such an application is filed in Regular Civil Appeal No. 65/2020, the learned District Judge, Kolhapur shall decide the same in accordance with law after hearing the parties. It may be stated that, the learned Judge shall decide the said application independently on its own merits, without being influenced by the order of this Court.

(SANDEEP K. SHINDE J.)