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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3066 OF 2023

Roshankumar Vijaykumar Pardeshi

PETITIONER

VERSUS

Kiranbai Vijaykumar Pardeshi and Others

RESPONDENTS

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Mr. Sudhakar T. Mahajan, Advocate for the petitioner

Mr. N. D. Batule, Advocate for respondents No.1, 9 and 10

Mr. V. V./ Bhavthankar, Advocate for respondents No.2 to 8

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th SEPTEMBER, 2023

ORDER :

1. Leave to correct the prayer clause.
2. The petitioner is aggrieved by the order passed by the learned Civil Judge, Senior Division, Ambajogai below Exhibit-5 in Special Civil Suit No. 3 of 2019 and the order passed by the learned District Judge-4, Ambajogai in Miscellaneous Civil Appeal No. 71 of 2022.
3. The petitioner – plaintiff filed the suit for partition and separate possession of the ancestral properties. Along with the suit, application Exhibit-5 is filed. The defendants appeared and resisted the suit, by filing written statements, contending that

partition of the ancestral properties was already effected in the year 1982-83, to which father of the petitioner was a party. Thereafter, again in the year 2011, further partition was effected and the petitioner is signatory to the partition deed, as witness. The Trial Court, after hearing the parties, has rejected the application Exhibit-5 filed by the petitioner and the said order is confirmed by the District Judge in appeal. Hence the present writ petition.

4. Heard learned advocate for the petitioner and the learned advocates for respondents. Perused the memo of writ petition, its annexures and the impugned orders.

5. It appears from the record that father of the petitioner has admitted that partition of the ancestral properties was effected in the year 1982-83 and since then he was residing separately. Regular Civil Suit No. 478 of 1986 was filed by the father of the petitioner against defendants No.2 and 3 and their father namely Munnalal Pardeshi, for declaration of ownership over house property Nos. 6-553 and 7-60. The said suit was compromised and the compromise *pursis* Exhibit-226 was placed before the Trial Court. In the said compromise also, the father of the petitioner, again admitted that partition was effected in the year 1982-83 and he was residing separately since then. Again

partition appears to be effected on 10th January, 2011, to which the petitioner – plaintiff is signatory as witness.

6. Both the Courts have recorded concurrent findings of fact that the petitioner has failed to make out a *prima facie* case and the balance of convenience does not lie in favour of the petitioner and no irreparable loss is likely to be caused to the petitioner, if injunction is refused. Both the Courts have rightly refused relief to the petitioner, by recording cogent reasons.

7. There is no illegality or perversity in the orders impugned in the present writ petition. No case is made out by the petitioner to exercise extraordinary writ jurisdiction to warrant interference in the impugned orders. Writ petition being devoid of merit is dismissed. Hearing of Special Civil Suit No. 3 of 2019 is expedited.

[NITIN B. SURYAWANSHI]
JUDGE