

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1097 OF 2021
WITH CA/1620/2022 IN WP/1097/2021

Shivaji Gangaram Thange

...Petitioner

Versus

Nanda Bhausahab Tikal And Others

...Respondents

Mr. N.D. Sonavane, Advocate for the petitioner.

Mr. S.S. Bora, Advocate h/f. Mr. V.S. Badakh, Advocate for
respondent No. 10.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 23rd MARCH, 2023

ORDER :

1. The petitioner is aggrieved by clause 5 of the order passed by learned District Judge-5, Ahmednagar, in Miscellaneous Civil Appeal No. 78/2019, wherein it is observed that defendant No. 10 is entitled to alienate his undivided share in the suit property to any third person.

2. Petitioner/plaintiff has filed suit for partition and separate possession of the suit property. It is the claim of the plaintiff that the suit property was jointly purchased by five owners including the plaintiff.

3. Application Exhibit-5 filed by the plaintiff is rejected by the Trial Court. Being aggrieved, the plaintiff filed Miscellaneous Civil Appeal No. 78/2019, wherein impugned order is passed.

4. Heard the learned advocate for the petitioner and learned advocate for the respondent No. 10. Perused the grounds taken in the petition, documents on record and the impugned order.

5. It appears from the record that earlier to the filing of the suit the joint owners have sold their undivided share in the suit property. The Appellate Court has already in clause no. 4 granted an injunction restraining defendant No. 10 from alienating his defined share, that itself is sufficient to protect the interest of the plaintiff.

6. By the clause impugned in the present petition, the Appellate Court has observed that, there is no temporary injunction against defendant No. 10 for alienating/transferring the land of his undivided share to any third person. This does not cause any prejudice the interest of the plaintiff. After the suit for

partition is allowed the share allotted to defendant No. 10 would go to the third person who may purchase his undivided share. Thus, the third person will step in the shoes of plaintiff and will be given share allotted to defendant No. 10.

7. The Appellant Court has passed a reasoned order. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioner to exercise extra ordinary writ jurisdiction. The writ petition being devoid of merit is dismissed.

8. In view of disposal of writ petition, civil application stands disposed of.

[NITIN B. SURYAWANSHI, J.]