

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 13545 OF 2023
SURESH VINAYAK BHARATI AND ANOTHER
VERSUS
PRATIBHA SUDAM BHARATI AND OTHERS**

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Advocate for Petitioners : Mr. Ambad Shrinivas Abhimanyu

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CORAM : SHAILESH P. BRAHME, J.

DATE : 30 OCTOBER 2023

PER COURT :

. Heard the learned Counsel for the petitioners.

1. The petitioners are original plaintiffs who have filed Special Civil Suit No.3/2021 for partition, possession and injunction. The application at Exhibit-5 is filed for temporary injunction restraining respondents/ defendants from creating third party interest. The said application was rejected by order dated 05.04.2022. Being aggrieved, petitioners preferred MCA No.15/2022, which was dismissed by judgment and order dated 03.02.2023.

2. The learned Counsel for the petitioners submits that both the Courts below committed error of jurisdiction. The respondents are likely to create third party interest. The subject matters are joint family properties. Those are purchased jointly. According to him, both the Courts below have incorrectly appreciated the material on record. The petitioners have undivided share. He would submit that deceased

Sudam had executed Will which should enure to the benefit of the petitioners.

3. I have gone through the order passed below the Exhibit-5 and judgment and order dated 03.02.2023. The respondent no.1 is the wife of deceased's brother of the petitioners, Sudam. Rest of the respondents are the siblings of respondent no.1. Both the Courts below have recorded the sale deeds of the suit land indicate name of deceased Sudam and there is no prima facie even to show that the suit lands are purchased jointly. It is also recorded that the sale deed of Gut No.12 shows petitioner no.1 as a witness from which it cannot be inferred that he is a joint owner. The reference to the agreement in respect of Gut No.465, 468 and submissions in that regard made on behalf of petitioners are rightly dealt with by the Lower Appellate Court.

4. Both the Courts below have properly appreciated the material on record and the submissions of the parties and they have arrived at a plausible conclusion. I do not find any perversity or patent illegality to cause interference in the impugned judgment and order. Besides that the petitioners will have protection under Section 52 of the Transfer of the Property Act. In that view of the matter, no case is made out by the petitioners to allow the petition. Therefore the petition is dismissed.

[SHAILESH P. BRAHME, J.]

Najeeb.