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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9571 OF 2023

Ujma Taskin Shadab Ghante and Another PETITIONERS

VERSUS

Mohd Gous Mohd Ibrahimsab Ghante RESPONDENT

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Mr. Sachin S. Deshmukh, Advocate for the petitioners

Mr. R. K. Ashtekar, Advocate for the respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 7th AUGUST, 2023

ORDER :

1. Order passed by the learned District Judge-4 Latur in Miscellaneous Civil Appeal No. 97 of 2022, thereby setting aside judgment and order passed by the Trial Court, below Exhibit-5 in Regular Civil Suit No. 744 of 2021 and partly allowing the application, thereby temporarily restraining defendant No.1 from carrying out any business in the suit property, till final disposal of the suit, is impugned in the present petition.

2. In the partition suit, preliminary decree is passed and the allotment of shares to the parties is yet to be finalized. By filing Regular Civil Suit No. 744 of 2021, the respondent – plaintiff has prayed for a declaration that the respondent – plaintiff is owner

and possessor of the suit property mentioned in the plaint. A prayer is also made in the suit for making inquiry about mesne profit as per Rule 12 of Order 20 of the Civil Procedure Code, against the defendants. Along with the suit, application Exhibit-5 is filed seeking injunction against defendant No.1 praying that the defendants be restrained from carrying out business illegally, under the names and style of "Joya Mangal Seva" and "Ghante Function Hall" or in any other name and style in the suit property.

3. By a reasoned order, the Trial Court rejected the application Exhibit-5, holding that the preliminary decree of partition is already passed and shares allotted in partition suit are yet not finalized. The respondent – plaintiff has claimed that the defendants are in possession of the suit property from 7th June, 2014 and, therefore, the plaintiff has no right to seek injunction.

4. Being aggrieved by the order passed by the Trial Court, the respondent – plaintiff approached the District Court, by filing MCA No. 97 of 2020 and the Appellate Court has passed the impugned order, solely on the ground that *"Law is well settled that, possession of one co-owner is possession of all the co-owners, unless ouster of one of the co-owner is proved."*

5. Having heard the learned advocate for the petitioners and the learned advocate for the respondent and after perusing the memo of writ petition, annexures, impugned order, affidavit in reply filed by the respondent and the citation relied on by the learned advocate for the respondent, this Court is of the view that the impugned order is unsustainable.

6. Admittedly, preliminary decree is passed and the partition is yet to be finalized and shares of the parties are yet to be allotted and the said process is undergoing. Considering this aspect, there is no merit in the contention of the respondent – plaintiff that the petitioners are carrying out business illegally in the suit property, under the names and style of “Joya Mangal Seva” and “Ghante Function Hall”. His further contention that the defendant No.1 has obtained license in the name of his daughter in law and is conducting business under that name, is also devoid of any merit.

7. Learned advocate for the respondent has relied on *“Rajendran Pillai V/s B.Bhasi” AIR 2022 Kerla High Court, 157*, wherein learned Single Judge of Kerla High Court has held that - *“there cannot be any temporary injunction against co-owner”* Co-owner in that case was attempting to construct building in

the co-ownership property during pendency of suit for partition, without consent of the plaintiff. Such are not the facts of the present case. So the citation is of no assistance to the respondent.

8. Admittedly, mesne profit is claimed in the suit. If the respondent – plaintiff succeeds in the suit, he will be entitled for the mesne profit of the suit property. But granting injunction, thereby restraining the petitioners from carrying out business is totally unreasonable and arbitrary approach on the part of the Appellate Court.

9. In that view of the matter, the impugned order cannot be sustained. In the result, Writ Petition is allowed in terms of prayer clause "A".

[NITIN B. SURYAWANSHI]
JUDGE