

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

**CIVIL APPLICATION NO. 7808 OF 2023
IN SA/416/2022**

Sadakunwar Pannalal Bharadiya
Since deceased through L.Rs.
Pannalal Kanhaiyalal Bharadiya
and others

.. Applicants

Versus

Jambu Vitthalrao Chaware
Since deceased through L.Rs.
Chetan Jambu Chaware and others

.. Respondents

Mr. Anand P. Bhandari, Advocate for the Applicants.
Mr. S. S. Rathi, Advocate for Respondent Nos. 3A to 3F.
Mr. Girish Rane, Advocate for Respondent Nos. 10 and 11.

CORAM : KISHORE C. SANT, J.

DATED : 27th SEPTEMBER, 2023.

P. C. :-

. Heard learned advocates for the parties.

2. This application is filed by original plaintiff in appeal filed by the defendants i.e. respondent Nos. 1-A-1 and 1-A-4 challenging decree passed in the appeal by learned District Judge – 1, Nanded in original Civil Appeal No. 111/2012. The suit for partition is decreed.

3. The application is filed on the background that during the pendency of the second appeal and before the order of interim

injunction passed by this Court some of the respondents have executed a sale deed in favour of proposed respondent Nos. 10 and 11. Therefore, a prayer is made for injunction restraining the proposed respondents from alienating or creating third party interest changing the nature of suit property and developing the said land by creating plots therein. A prayer is also made for impleadment of respondent Nos. 10 and 11.

4. Learned advocate for the applicants submits that, while considering the application for interim relief this Court has later on granted injunction in favour of the applicants. However, since the sale deed is executed before the order of injunction passed proposed respondent Nos. 10 and 11 are not bound by the order. While granting injunction this Court has clearly with intention to protect the property and interest of the plaintiff and therefore, it is necessary to pass an order even against proposed respondent Nos. 10 and 11 by adding them as necessary parties. It is also submitted that, the Court on its own has granted injunction as is clear from the order dated 25.04.2023.

5. Mr. Rane, learned advocate for proposed respondents vehemently opposes the application stating that, in view of Section 52 of the Transfer of Property Act, a care is taken of the interest of the

plaintiff/applicants and therefore, no specific order is necessary. He submits that, it is not specified as to whether the present application is under Order 22 Rule 10 or Order 1 Rule 10 (2). The applicants have to choose one of the provisions as the same will decide the nature of defence. His further submission is that, Gat No. 75 is totally admeasuring 3 Acres and 25 R. The plaintiff is granted half share in all the properties including property Gat No. 75 and thus the plaintiff could be entitled to only 1 Hectare and 62.5 R land at the most. He further submits that, some of heirs of the plaintiff have already consented to the transaction considering that as on today the interest of the plaintiff at the most is to the extent of 45% of the land and would not be equitable to grant injunction on the entire land. He further submits that, in the sale deed there is clear recital about the litigation pending between the parties including pendency of the present second appeal and as such a care is taken to protect the interest of the parties.

6. Mr. Bhandari, learned advocate in rebuttal submits that, as on today the share/portion is not determined and it is only at the time of execution. The Collector would decide the exact portion by metes and bounds and for the purpose of partition entire property required to be available and therefore injunction needs to be granted.

7. Considering the submissions and considering the fact that, this

Court by order dated 25.04.2023 has granted injunction against the respondents whereas, the sale deed on 09.01.2023 it is clear that proposed respondent Nos. 10 and 11 have purchased the property prior to passing of order and therefore, it is necessary to restrain them from creating further rights or third party interest so as to avoid the complications. Therefore, considering all the above facts this Court finds that, the application deserves to be allowed.

8. The civil application is allowed in terms of prayer clause (B).

9. As regards prayer clause (C) the respondents are restrained from creating third party interest in the suit property.

10. The civil application is disposed off.

(KISHORE C. SANT, J.)

PS.B.