

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

WRIT PETITION NO.11730 OF 2021

**SANTOSH NARSU KHAWADE
VERSUS
TULSHIRAM NARSU KHAWADE AND OTHERS**

...
Advocate for Petitioner : Mr. Charuta Deshmukh
Advocate for Respondent Nos. 1 to 4 : Mr. A.J. Patil
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 13th JUNE, 2023

PER COURT :

1. Petitioner by this petition filed under Articles 226 and 227 of the Constitution of India, has challenged the order dated 20/01/2020, passed by learned District Judge-3, Jalgaon, in Misc. Civil Appeal No.28/2019, thereby confirming the order passed by learned Joint Civil Judge, Junior Division, Jamner, below Exhibit-6 in Regular Civil Suit No.57/2019.

2. Respondent No.1/original plaintiff filed the suit for partition and separate possession and for perpetual injunction. Along with the suit, application Exhibit-6 for temporary injunction is filed with prayer to restrain defendant No.1 from carrying out construction work on the Western side of suit property i.e. Gut No.4, situated at village Maldabhadi, Tq. Jamner, District Jalgaon. Defendant No.1 appeared and opposed the suit by filing written

statement and say. It is claimed that in the year 1981 partition took place between the defendants and all the shareholders are in possession of their respective share and there is no boundary dispute. The house property is ancestral property of the plaintiff and defendant Nos.1 and 2. In the partition of 1981 the said house property was given to the share of defendant No.1.

3. Trial Court allowed the temporary injunction application Exhibit-6 by taking into consideration the temporary injunction granted in R.C.S. No.52/2019, filed in the same Court by defendant No.2 Udayraj @ Uttam Kharde. By the said order, construction work going on in the suit property was directed to be stopped immediately. Defendant No.1 challenged this order of grant of temporary injunction by filing Misc. Civil Appeal No.28/2019. The appeal is dismissed. Hence, the present petition.

4. Heard learned advocate for petitioner and learned advocate for respondent Nos.1 to 4. Perused the writ petition memo, annexures thereto and the impugned order.

5. Learned advocate for petitioner has categorically made a statement that his construction is within his own portion of land Gut No.4. In support of his submission he has placed on record photographs which according to him show that he is constructing on his own property.

6. Learned advocate for respondents opposed the petition and supported the order impugned in present petition. He further submits that since recording of evidence is going on in the trial Court, this Court may not interfere at this stage by exercising extra-ordinary writ jurisdiction.

7. In view of the fact that both petitioner and respondent No.1 had purchased the undivided share from Gut No.4 and the same is not partitioned by metes and bounds, petitioner alone cannot be allowed to make construction on the suit property, without consent of respondent No.1. Apart from this, since in the trial evidence is being recorded, it is not desirable to enter into the merits of the rival contentions at this stage.

8. *Prima facie* no case is made out by the petitioner to interfere in exercise of extra-ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)