

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1987 OF 2022

Suman Santosh Sawant

... Petitioner

V/s.

Arun Maruti Rawool & Ors.

... Respondents

Mr. Bhushan Walimbe for the petitioner.

Mr. Sanskar Marathe for respondents Nos.1 to 5.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 27, 2023

PC.:

1. The writ petition arises out of rejection of application for temporary injunction restraining respondents (defendant Nos.1 and 2) from disturbing possession of the plaintiff over the suit property and restraining defendant No.1 from constructing over the suit property.

2. The petitioner filed suit for partition and possession contending that the suit properties are ancestral properties of the plaintiff and defendant Nos.2 to 7. The validity of Will executed in favour of the predecessor of the plaintiff is also challenged.

3. The Trial Court recorded a finding of partition in the year 2011 and held that the plaintiff and defendants were allotted residential flats in the Will. The findings of partition is based on

long standing family arrangement made by the predecessor-in-title of the plaintiff and defendants (Harishchandra). It is also held that the plaintiff got benefit of the Will. Based on such registered Will executed by Harishchandra in favour of defendant Nos.2 and 3, it is held that they have executed development agreement in favour of defendant No.1. Defendant No.1 before entering into the development agreement invited objections by issuing public notice. Therefore, the Trial Court rejected application for temporary injunction.

4. The Appellate Court concurred with the Trial Court and on independent consideration of the material on record recorded a finding that initially the suit property was sold in favour of Shikshan Prasarak Mandal on 30 March 1960. In a suit filed by Harishchandra against said Shikshan Prasarak Mandal, a compromise decree was executed conferring ownership on Harishchandra. Based on conferment of such ownership, Harishchandra executed Will in favour of defendant Nos.2 and 3. Therefore, the plaintiff cannot claim any right over the suit property.

5. Learned advocate for the petitioner submitted that Harishchandra filed suit for and on behalf of joint family as initially on the date of execution of sale deed in favour of Shikshan Prasarak Mandal, the property was ancestral property. Therefore, the status of property remains to be that of ancestral property. However, on perusal of the terms of compromise decree, it appears that unqualified right of ownership is conferred on Harishchandra by way of said compromise decree. Therefore, prima facie Courts

below are right in holding that Harishchandra was exclusive owner of the property. He executed registered Will in favour of defendant Nos.2 and 3, who in turn executed development agreement in favour of defendant No.1. The petitioner got benefit of the Will and, therefore, the petitioner is precluded from raising challenge to the Will. Moreover, before entering into development agreement, defendant No.1 had issued public notice.

6. On overall consideration of the judgments passed by the Courts below, prima facie finding recorded by the Courts below that Harishchandra was exclusive owner who executed Will in favour of defendant Nos.2 and 3 and plaintiff, based on which defendant Nos.2 and 3 are entitled to execute development agreement in favour of defendant No.1. The finding is based on material on record which cannot be termed as perverse. Hence, refusal of injunction based on concurrent findings recorded by the Trial Court cannot be said to be perverse. Hence, interference under Article 227 of the Constitution of India is uncalled for.

7. The writ petition stands dismissed. No costs.

8. It is made clear that the observations made in the present order are restricted to the adjudication of temporary injunction application and shall not influence the Trial Court while deciding substantive suit.

9. It is also made clear that third party rights created henceforth shall be subject to the final decision in the suit.

(AMIT BORKAR, J.)