

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5276 OF 2023

Dnyaneshwar Ganesh Patil

...Petitioner.

Versus

Nirmala Pundlik Mali & Ors.

..Respondents.

Mr. Kedar Patil i/b Trupti Bharadi for the petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : June 30, 2023.

P. C. :

1. Heard. The challenge in the petition is to the judgment dated 8th September 2021 passed by the learned District Judge, Raigad at Panvel dismissing the miscellaneous civil appeal filed by the petitioner herein, whereby the order passed by the trial Court below Exhibit-5 was confirmed.

2. Regular Civil Suit No.56 of 2019 was filed by respondent No. 1 – plaintiff for partition, injunction and cancellation of will-deed dated 25th October 2012. The case of respondent No.1–plaintiff is that she is one of the legal heirs of late Parshuram Ambo Patil, who was the owner of suit properties. It is claimed that by taking undue advantage

of advanced age as well as illiteracy of said Parshuram Patil, the petitioner got executed the Will dated 25th October 2012 and, as such, the suit came to be filed. In the application below Exhibit-5 restraining orders were sought restraining the defendants from alienating the suit property or creating third party interest till the disposal of suit, which application came to be partly allowed and temporary injunction restraining defendant no.3 from alienating the suit property or creating third party interest therein till the disposal of suit was granted. In miscellaneous civil appeal filed thereagainst, the order of trial Court came to be confirmed. As such, the present petition.

3. Learned counsel appearing for the petitioner submits that by the Will of the year 2012, his grand-father has bequeathed the suit property in favour of the petitioner and the probate of the said Will is obtained. He would further submit that the remedy of respondent No.1–plaintiff is to challenge the grant of probate and/or to file for revocation of probate. He would further submit that it is evident from the plaint that it is not the case of plaintiff that she was not aware of the Will executed by her grand-father.

4. The suit in question has been filed for partition and

cancellation of the Will executed by the grand-father of respondent No. 1 in favour of the petitioner. It is not in dispute that respondent No.1 is the grand-daughter of testator and in the probate proceedings, there was no citation issued to her, and only a public notice was issued. Respondent no.1 has come with the case that being the legal heir, respondent No.1 has an undivided interest and share in the suit property and the Will executed by the testator is being challenged. On the basis of Will, the petitioner claims to be an absolute owner of the suit property and as such the apprehension which is expressed by respondent No.1 – plaintiff that on the basis of probate, the petitioner may deal with the property which would ultimately adversely affect the right of plaintiff even before the adjudication of suit on merits, cannot be said to be unfounded.

5. It is not in dispute that without issuing citation to respondent No.1 who is one of legal heirs, the probate has been granted and, as such, the apprehension of respondent No.1 is not without foundation. The purpose of interim injunction is to protect the suit property. As regards the issues raised as to whether the suit is maintainable or whether respondent No.1 was aware of the Will, will all be the matters of adjudication. However, in the present case, considering that the petitioner has obtained probate of the Will and has

established his right as a legatee, for the purpose of protecting the suit property, the injunction restraining the petitioner from alienating the suit property cannot be said to suffer from any infirmity. The appellate Court has upheld the finding of the trial Court and on the basis of factual position that respondent No.1 was not cited in the probate proceedings, has held that the apprehension of respondent No.1 about the petitioner dealing with the property on the basis of probate cannot be said to be unfounded.

6. Considering that respondent No.1 is claiming a share in the suit property, which if the restraining orders are not passed, may result in the property being transferred during the pendency of suit proceedings leading to multiplicity of litigation, in my opinion, there is no reason to interfere with the concurrent findings. What is required to be noted is that impugned orders cannot be said to be causing any irreparable loss to the petitioner inasmuch as he is being restrained from creating third party interest in the property in respect of which respondent No. 1 claims partition.

7. In view of the above, in my opinion, respondent No.1 has made out a *prima facie* case and the balance of convenience is in her favour. As such, I am not inclined to interfere with the impugned

order. Writ petition stands dismissed.

8. Needless to state that the observations made hereinabove are for the purpose of testing the validity of impugned order and the trial Court to adjudicate the matter on its own merits uninfluenced by the observations made hereinabove.

[Sharmila U. Deshmukh, J.]