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

**WRIT PETITION NO. 9521 OF 2022
WITH
WRIT PETITION NO. 10030 OF 2022**

Raghunath Savalaram Salunkhe ... Petitioner
vs.
Dadaso Savalaram Salunkhe and Ors. ... Respondents

Mr. Umesh Mankapure for the Petitioner.

Mr. Padmanabh D. Pise i/b. M/s. P. Padmanabh & Associates for
Respondent no. 1.

Ms. V. S. Nimbalkar, AGP for Respondent no. 4 – State.

CORAM : SANDEEP V. MARNE, J.

DATED : 24 JANUARY, 2023

P.C. :-

1. The petitioner is aggrieved by the judgment and order dated 8 June 2022 passed by the Principal District Judge, Sangli in Land Reference Miscellaneous Application no. 29 of 2020 and 20 of 2021. The grievance of the petitioner is that during the pendency of the suit filed by them for partition the reference court has recorded a prima facie finding of the suit property not being joint family property. An apprehension is expressed that the finding recorded by the reference court

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would be considered pending by the Learned Civil Judge Senior Division, Sangli before whom the suit for partition is pending.

2. Another grievance expressed by the petitioner is that while the respondent no. 1 is permitted to withdraw his share in the compensation by providing solvency certificate or bank guarantee no arrangement is made in respect of interest and that in the event of the petitioner succeeding in the suit for partition, it would be difficult to bring back money from respondent no. 1 along with interest.

3. In the land reference decided by the reference court under section 3H of the National Highways Act, only a prima facie finding is recorded with regard to the nature of the property for the limited purpose of deciding the issue of apportionment. Substantive suit bearing Special Civil Suit No. 15 of 2015 for partition of the property is already pending before the District Court, Sangli. The reference court itself has made share of respondent no. 1. dependent on the outcome of Special Civil Suit no. 15 of 2015. To my mind therefore finding recorded by the reference court about nature of the property would not bind the court of Civil Judge Senior Division before whom the suit for partition is pending.

4. In my view therefore the present writ petitions can be conveniently disposed with clarification that the finding recorded by the reference court with regard to nature of the property would not be binding on the court of Civil Judge before whom Special Civil Suit No.15 of 2015 is pending. That court shall decide the case on its own merits without being influenced by any of the finding recorded by the reference court.

5. So far as the issue of interest on the demanded share of compensation by petitioner is concerned, the learned counsel for respondent no. 1 submits that respondent no. 1 has already submitted/ or going to submit bank guarantee for entire half share allotted to respondent no.1. In the event of the petitioner succeeding in the suit for partition, he would be entitled to half amount of the share granted to respondent no.1. Since the bank guarantee submitted/to be submitted by respondent no. 1 covers entire half share in my view the apprehension about interest payable on the amount of compensation of share becoming due to the petitioner is taken care of. Since the Special Civil Suit no. 15 of 2015 has been pending for

considerable period of time the court of Civil Judge, Senior Division is requested to expedite the same.

6. The writ petitions are accordingly disposed of with the above clarification. There shall be no orders as to costs.

(SANDEEP V. MARNE, J.)