

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

WRIT PETITION NO.8422 OF 2023

Parsharam Vishnu Mohite and Anr. Petitioners
Vs.
Jagannath Maruti Mane Decd through
LRS & Ors. Respondents

Mr. Kuldeep U. Nikam for the Petitioners.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 11 JULY 2023.

P. C.

1. Heard.

2. The challenge in the petition is to the order dated 21/4/2023 rejecting the petitioner's application for being impleaded as party to Regular Civil Suit No.156/2014. The said Suit was instituted by the original plaintiff i.e. the mother of the present petitioners claiming injunction as against the defendant on the ground that the defendants are disturbing her possession over the suit property. Application for being impleaded is premised on the ground that, subsequent thereto, there was partition between the family members of the original plaintiff which included the petitioners and the suit property has come to the share of the

petitioners. The trial Court has rejected the application.

3. Heard Mr. Kuldeep U. Nikam for the Petitioners.

4. Learned counsel appearing for the petitioners would contend that upon partition, the suit property came to the share of the petitioners and as such they step into the shoes of the original plaintiff and are required to be impleaded as party. He would further submit that one of the grounds on which the trial Court rejected the application is that there is no whisper about the possession of the petitioners over the suit property.

5. Considered the submissions.

6. The suit has been filed for simplicitor injunction seeking restraining orders against the defendants from interfering with the possession of the original plaintiff. The cause of action is personal to the original plaintiff as the relief sought for was regards interference by the defendant over her possession of the suit property. The cause of action which arose for the plaintiff to file the

suit cannot be said to be cause of action available to the petitioners who claim to acquire right by virtue of partition during pendency of the proceedings. The trial Court has rightly considered the averment in the application seeking impleadment that the applicant does not state about any obstruction by the defendants over the suit properties. The trial Court after considering the material available on record has held that the petitioners cannot be added as plaintiffs based on acquisition of right by virtue of partition. It cannot be disputed that if cause of action arose to the petitioners, the petitioners are entitled to maintain proceedings against the defendants for injunction. However based on the cause of action which was personal to the original plaintiff, the petitioners cannot be said to step into shoes of the plaintiff and be permitted to continue the proceedings.

7. There is no reason to interfere with the well reasoned order passed by the trial Court.

8. The petition stands dismissed.

SHARMILA U. DESHMUKH, J.