



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

954 CIVIL APPLICATION NO. 1986 OF 2024
IN SA/385/2017

Deorao Tukaram Kadam Lrs Aruna & othersApplicants

VERSUS

Shantabai Govindrao Kurme & othersRespondents

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Mr. K. R. Yadav, Advocate holding for Mr. S. J. Salunke, Advocate for
Applicant

CORAM : R. M. JOSHI, J.
DATE : 15th FEBRUARY, 2024.

PER COURT :

1. This application is for stay to the execution proceeding filed pursuant to the judgment and decree passed in Regular Civil Suit No. 1/2007.

2. Applicant/appellant is the original defendant in the suit filed by plaintiffs for partition and separate possession of their respective shares in the suit properties. There is no dispute about the fact that the suit properties are ancestral properties. It is not the case of defendant that previous partition has taken place in respect of the same. The relationship between plaintiffs and defendant is

admitted. Defendant has admitted in his cross examination that plaintiffs have right to seek share in the suit properties.

3. It is the contention of learned counsel for defendant that there was relinquishment of rights by plaintiffs and therefore, there is no cause of action for the plaintiffs to file suit seeking partition of the suit properties. It is also sought to be argued that after death of father of plaintiffs and defendant in the year 1975, the suit properties are mutated in the name of defendant alone and since the plaintiffs have not challenged said mutation entries, now it is not open for them to seek partition.

4. Admittedly, suit properties are joint family properties and there is no previous partition thereof. In view of amendment to Section 6 of Hindu Succession Act in the year 2006, daughters being coparceners have acquired equal right in the property of joint family. Exceptions provided to the said provision are not applicable to this case.

5. Prima facie, mutation entry does not confer any right or title in favour of any person. Similarly, contention of defendant

about relinquishment of right by plaintiffs in the suit properties does not get support from evidence on record. Judgment relied upon in the case of Bhaurao s/o Harichand Sahare & others vs. Santosh s/o Jairam Sahare & others, **2015(1) ALL MR 302**, refers to the situation wherein pursuant to the oral relinquishment done earlier in time, a document came to be recorded which was not registered. Such are not facts pleaded or proved in this case. Thus, facts of the said case differ from the case in hand.

6. In prima facie view of this defendant/appellant has not been able to make out any case for grant of injunction/relief. Hence, application is dismissed.

(R. M. JOSHI)
Judge

dyb