

VRJ

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

WRIT PETITION NO.6648 OF 2024

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Ranjit Vijay Mali

... Petitioner

V/s.

Subhash Bhiku Mali

... Respondent

Mr. Prabhakar Jadhav i/by Mr. Vishal Laxman Kolekar
for the petitioner.

Mr. Rajaram V. Bansode for the respondent.

CORAM : AMIT BORKAR, J.

DATED : JUNE 14, 2024

P.C.:

1. The petitioner – original defendant in a suit for partition and injunction is challenging order passed by the Courts below rejecting the petitioner’s application restraining the respondents from carrying out construction over the suit property 1-B.
2. The Trial Court relying on document dated 22 January 2008 recorded a finding that the said document is registered partition deed whereby suit property 1-B was allowed to the share of father of the plaintiff and the defendant, out of which 22R was mutated in the name of plaintiff’s father and balance 22R was mutated in the name of defendant.
3. It also appears at this stage that the defendant has raised a

specific plea of partition in paragraph No.7 of the written statement. Both the Courts below prima facie recorded a finding that there is severance of status of parties in relation to suit property 1-B. Therefore, till the suit is finally decided, the defendant cannot be restrained from carrying out construction over suit property 1-B. It appears that the Courts below relied on entries in record of rights which show defendant's occupation to the extent of 22R and even plaintiff's occupation to the extent of 22R.

4. Therefore, prima facie finding recorded by the Courts below holding that the status of suit property 1-B has ceased to be joint property is based on material on record. Whether partition of suit property 1-B was conclusively effected or not needs to be adjudicated after allowing parties to lead evidence. However, at this stage, prima facie material indicates that severance of status and partition by both sides. Hence, no interference is called for under writ jurisdiction.

5. The writ petition stands disposed of. No costs.

6. It is made clear that the Trial Court shall not be influenced by the impugned judgment or the present order at the time of decision of the suit. The Trial Court shall decide the suit on its own merit.

7. Considering the facts of the case hearing of the suit is expedited.

(AMIT BORKAR, J.)