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

WRIT PETITION NO. 2198 OF 2024

Anandrao Dattatraya Bhondve and Anr. .. Petitioners

Versus

~~Housabai Dattatraya Bhondve~~

Deceased During the pendency of Suit

D.D. Bhodve Deceased through Lrs. and Ors. .. Respondents

.....

- Mr. Nitin Deshpande, Advocate for Petitioners.
- Mr. Vilas B. Tapkir, Advocate for Respondent.

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 20, 2024.

P.C.:

1. Heard Mr. Deshpande, learned Advocate for Petitioners and Mr. Tapkir, learned Advocate for Respondents.

2. Petitioners and Respondents are all coparceners in joint undivided family ancestral property. Suit is filed in the year 2005 for partition by Respondents. Much time has already lapsed and now the Suit is at the stage of evidence of Plaintiffs.

3. Be that as it may, some of the parties in the partition Suit have sold their rights to third parties. The other parties to the partition Suit are aggrieved who are the Petitioners before me. These aggrieved parties filed a Counter Claim solely to protect their substantive division / share and interest in the property so as to not be affected with the

alienation of the share by the other co-owners. That Counter Claim has not been taken on record by virtue of the impugned order.

4. Mr. Deshpande would submit that a substantive right emerges to the Petitioners because Petitioners should not be prejudiced ultimately with respect to their shares when the shares will be determined. Mr. Deshpande is right in his contention. It is trite that the Suit is for partition. The parties before the Court are all in the nature of the Plaintiff and there is no Defendant *qua* any particular Plaintiff. Determination of Suit for partition ultimately would be the precursor to any further substantive right that may follow thereafter with respect to division of the properties *qua* any Defendant who may have alienated their respective shares to any third party. There can be no question of any of the parties to the Suit who have not alienated their shares to be affected by any such disposition of the properties before partition. The learned Trial Court while passing the impugned order dated 30.09.2023 has correctly examined the position and returned the Counter Claim of the third party purchasers of undivided shares and rightly so.

5. I see no reason as to why this Court should interfere with the order passed by the learned Trial Court. The order dated 30.09.2023 is sustained. However, at the request of both the learned Advocates, it is clarified that the Suit determining partition shall be determined strictly

in accordance with law. The undivided shares *qua* the disposition of those shares to the third parties shall strictly be governed after partition is effected in accordance with law and without any prejudice to the rights of those parties who have not alienated the shares.

6. At the joint request of both the learned Advocates, the learned Trial Court is requested by this Court to determine Regular Civil Suit No.150 of 2012 as expeditiously as possible and preferably within a period of six (6) months from today positively.

7. It is clarified that parties shall not take any unnecessary adjournments and the Trial Court shall grant adjournment only if it is utmost necessary.

8. Parties assure this Court that they shall cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

9. Needless to state that all contentions of the parties are expressly kept open before the learned Trial Court.

10. With the above observations, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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