

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1501 OF 2024

Pralhad Balkrishna Balghare and Anr.

.. Petitioners

Versus

Suryakant Balkrishna Balghare

.. Respondent

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- Mr. Anil Anturkar, Senior Advocate i./by Mr. Yatin Malvankar, Advocate for Petitioners.
- Ms. Vilasini Balasubramanian i./by Mr. Anurag Mishra, Advocate for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 06, 2024

P.C.:

1. I have heard Mr. Anturkar, learned Senior Advocate for the Petitioners and Ms. Balasubramanian, learned Advocate for the Respondent. Petitioners are Defendant Nos.1 and 2 and Respondent is Plaintiff before the Trial Court. It is seen that there are two concurrent orders passed by the Trial Court and the Appellate Court under Exhibit “5”. By virtue of these two orders, Defendants in the Suit, specifically Defendant No.2 has been enjoined and restrained from selling, transferring, assigning or in any other way alienating the Suit properties received by her from Defendant No.1 by virtue of two registered Gift Deeds made on 25.04.2013 and 17.06.2013.

2. It is seen that Petitioner No.1 is 72 years old and Petitioner No.2 is 57 years old as stated in the Writ Petition.

3. Mr. Anturkar would passionately submit that the issue raised in the present Petition is between two brothers and the subject properties under the two Gift Deeds are the only source of avenue and livelihood for the Petitioners / Defendants. He has drawn my attention to paragraph No.6 in the Suit plaint which states that the said joint family property was the self acquired property of Shivram Laxman Balghare. According to him therefore this would not be deemed to be ancestral property. He would submit that though the Gift Deeds are made by Defendant No.1 in the year 2013, the Suit is filed on 12.11.2019 by the Plaintiff through his constituted Power of Attorney who is a third party and not at all concerned with the Suit property. He would submit that this Court should therefore intervene and pass appropriate orders in the interest of justice.

4. Ms. Balasubramanian would submit that Mr. Mishra is appearing for the Respondent in the Petition and she has no instructions in the matter. Though initially I have informed her that merely having two concurrent orders in favour would not mean that the same are correctly passed and are required to be upheld by this Court. Undoubtedly, Respondent will have to be heard in this matter.

5. However, I have perused the Suit plaint in order to understand the facts of the *lis* between parties and perusal of paragraph Nos.18 to 26 of the Suit plaint is a little disturbing.

Shivram is the grandfather of Defendant No.1 and Plaintiff. Devolution of Suit property from Shivram to Defendant No.1 is not explained by Defendant No.1. If these properties have come to the Defendant No.1 legally to the exclusion of all other legal heirs namely Plaintiff (brother) or their 3 sisters, then Defendant No.1 should show how these properties have come to his entitlement to enable him to make / donate them by virtue of the two Gift Deeds to his wife i.e. Defendant No.2. Hence the relevance of paragraph No.6 in the plaint may not enure to the benefit of the Defendants. This appears to be the precise case in the plaint. It is stated that Defendant No.2 has also filed a parallel Civil Suit, RTS proceedings, Demarcation proceedings and a Writ Petition in this Court on the basis of the two Gift Deeds seeking exclusive entitlement of the subject Suit properties received by her in the interregnum for division and exclusive title as also separate property card. Case of the Plaintiff is that partition of the Suit properties has not been effected by metes and bounds despite the three sisters having relinquished their rights in the Suit properties. Such information is gathered from a *prima facie* perusal of the averments in the Suit plaint.

6. In view of the above, Respondent is directed to file appropriate Affidavit in reply, if so desired, on or before the next adjourned date. Petitioners are also directed to answer the above

questions raised by Court.

7. It is clarified that this Writ Petition shall be heard finally at the stage of admission itself and disposed of.

8. Stand over to **14th February, 2024** at 02.30 p.m.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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