



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6909 OF 2023

PRAVIN ALIAS TUKARAM SITARAM SHALU
VERSUS
MURLIDHAR NARAYAN SHALU AND OTHERS

...
Mr. Nikhil S. Tekale, Advocate for the Petitioner.

Mr. Ranjit D. Gaikwad h/f Mr. S. G. Kawade, Advocate for
Respondent No.1.

Mr. P. D. Dadpe, Advocate for Respondent Nos.5 and 6.

...
**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 23rd JULY, 2025.**

P.C.:-

1. The present Writ Petition takes exception to order dated 21.03.2023 passed by Additional District Judge, Bhoom in Miscellaneous Civil Appeal No.06/2023, by which petitioner has been injuncted from alienating or creating third party interest in suit property, which is subject matter of Regular Civil Suit No.1192/2022 before learned Civil Judge Junior Division at Bhoom.

2. The respondent no.1/plaintiff instituted Regular Civil Suit No.1192/2022 before Civil Judge Junior Division at Bhoom claiming relief of partition and separate possession in respect of suit property i.e. land Gut No.322/1 situated at Bhoom (Rural) to the extent of 1H 90R. The plaintiff claims that he is entitled for 1/3rd share in suit property.

3. In nutshell it is contention of plaintiff that one Nana @ Tukaram Shalu had three sons namely Dinanath, Sitaram and

Narayan. All three brothers were holding joint family property. Sitaram got sale deed executed in respect of suit property in the name of his sons Bhagwan and defendant no.1 i.e. Pravin @ Tukaram. Eventually, mutation entries were recorded in their names. However, suit property was joint family property and brothers of Sitaram were also having $1/3^{\text{rd}}$ share each. The plaintiff claims his right through Narayan i.e. brother of Sitaram. The plaintiff filed application below Exhibit-5 seeking temporary injunction against defendants to restrain them from alienating and creating third party interest in suit property to the extent of 1H 27.05R.

4. The Trial Court after considering rival contentions refused to grant injunction as prayed vide order dated 20.02.2023. Aggrieved plaintiff filed Miscellaneous Civil Appeal No.6/2023 before learned District Judge at Bhoom, who partly allowed Appeal and granted temporary injunction restraining petitioner/defendant no.1 from alienating or creating third party interest over suit property.

5. Mr. Tekale, learned Advocate appearing for petitioner vehemently submits that partition between Sitaram and his brothers took place in the year 1956. The suit property has been purchased under Sale Deed No.826/1966 exclusively in the name of Bhagwan and Tukaram (defendant no.1). There was no common

nucleus. Therefore, suit property cannot be termed as joint family property and plaintiff cannot assert any right over the same.

6. Per contra, Mr. Gaikwad, learned Advocate appearing for respondent no.1 submits that Appellate Court on elaborate consideration of material on record found that amount of Rs.4000/- utilized as consideration for transaction, was paid from joint family nucleus. As such suit property cannot be said to be exclusively owned by defendant no.1 or his brothers.

7. Having considered submissions advanced, it can be observed that it is not in dispute that three sons of Nana @ Tukaram namely Dinanath, Sitaram and Narayan had partitioned joint family property in the year 1956. The sale deed of 1966 is admittedly in the name of deceased Bhagwan and defendant no.1. The suit for partition is filed by respondent in the year 2022 asserting right in land Gut No.322/1, which is standing in the name of defendant no.1 since 1966 onwards. Whether purchase of property in the year 1966 in the name of defendant no.1 was out of consideration generated from joint family nucleus will have to be decided after substantive trial in suit. However, no presumption as to joint-ness can be drawn at this stage. It is for the plaintiff to prove that consideration amount was contributed from joint nucleus. In such case, burden cannot be shifted upon defendant, particularly when property is purchased under registered sale deed in the year 1966

after partition of joint family had taken place in the year 1956. In that view of the matter, learned District Judge had no reason to delve into merits of the matter and draw inference at premature stage while reversing order passed by Trial Court.

8. At this stage Mr. Tekale, learned Advocate appearing for petitioner, on instructions, submits that petitioner/defendant no.1 is ready to file an undertaking before Trial Court that in case he alienates suit land or it's part, such transaction shall be made with intimation on record of suit and purchasers would be given notice regarding pending suit involving suit property. He shall also undertake that no equity would be claimed, in case, decree is passed against him.

9. In view of aforesaid statement, Writ Petition is **allowed** in terms of prayer Clause (A). However, petitioner shall file an undertaking within period of four weeks from today before Trial Court in aforesaid terms.

(S. G. CHAPALGAONKAR)
JUDGE