



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

20 WRIT PETITION NO. 7233 OF 2019

YUVRAJ KASHINATH KADAM

VERSUS

KASHINATH SAVLERAM KADAM AND OTHERS

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Advocate for the Petitioner : Mr. Thigale Girish K. (naik)

Advocate for Respondent Nos. 4 to 6 : Mr. S. V. Dixit

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CORAM : KISHORE C. SANT, J.

Dated : February 03, 2025

PER COURT :-

1. Heard the parties. By consent taken for final disposal.

2. The respondent No.8 is not served both the parties submits that his presence is not necessary as appeal is by the original plaintiff and the appellant before the learned Appellate Court, the respondent No.8 is the co-defendant in the suit. By way of an impugned order dated 04.05.2019 by the Hon'ble District Judge-5, Beed in RCA No. 17/2019, the applications of the petitioner-original plaintiff below Exh. 5 and 19 came to be rejected.

3. It is the case of the petitioner that he had filed a suit bearing RCS No. 362 of 2012 for partition and separate possession. In the said suit, he had prayed for temporary injunction by filing an application below Exh. 5. The exh. 5 is allowed by this Court in WP No. 12394 of 2016 by order dated 21.11.2018. Thus, during the pendency of suit before the Trial Court, there was interim relief in favour of the petitioner. Thereafter, the suit came to be dismissed. The petitioner had filed regular civil appeal challenging the judgment and order. In the said appeal, he filed two applications, one below Exh. 5 seeking temporary injunction restraining respondent No.6 from alienating the property in his possession. The application below Exh. 13 was filed for similar prayer. Both the applications came to be disposed of by way of impugned order.

4. The learned Advocate submits that against the impugned order, when he approached this Court, this Court while issuing the notice protected the interest of the petitioner by order dated 18.06.2019 and the same is

continued till today. He thus submits that, when there is *prima-facie* case in favour of the petitioner, in case the property is transferred by respondent No.6 that will cause great prejudice and irreparable loss to the petitioner. He thus prayed for allowing the petition.

5. The learned Advocate for respondent Mr. Dixit, opposes the petition. He submits that from the prayer in the suit, it is seen that there was a previous partition that took place in year 1970. As per the case of the petitioner himself, the said partition is not challenged till now. We have tried to sell the property to his extent, therefore he has filed suit only in respect of other properties and mainly which has given to the share of present respondent No. 6. He submits that the learned Trial Court has considered the *prima-facie* case. The Trial Court after full-fledged trial has answered the issues against the petitioner. He thus submits that no case is made out to disturb the findings recorded by Appellate Court that the suit is of 2012 till 2018 i.e. 21.11.2018 there was no interim relief. He thus prays for rejection of the writ

petition.

6. After hearing the parties, this Court finds that though during the pendency of the suit there was interim relief but that was only till 18.06.2019 i.e. till disposal of the suit. It was only by order dated 18.06.2019 this Court granted interim relief. Thus for most of the time there was no interim relief.

7. The learned counsel for the petitioner relies upon the judgment in the case of ***Maharwal Khewaji Trust (Regd.) vs. Baldev Dass*** reported in (2004) 8 Supreme Court cases Page 488 and another judgment in the case of ***Patilbua Pandu Landoe vs. Sadashiv Vithoba Kamble and others*** reported in 1976 Mh.L.J. page 158.

8. Coming to the judgment in the case of ***Maharwal Khewaji Trust (Regd.) vs. Baldev Dass*** (supra), the appellant therein had filed civil suit for possession of the property and had filed an application under Order XXXIX Rule 1 and 2 of Civil Procedure Code, 1908, seeking

injunction restraining respondent therein from alienating the suit property and putting up any construction thereon. In that case, the Trial Court and High Court had protected the respondent to change the nature of the property by putting up the construction and also by protecting alienation of the property. In such events, it is open for the parties to seek damages in case the suit is dismissed. It is reported that no extraordinary ground was made out to protect the respondent to put up the construction and alienating the same and in that view, the orders passed by the High Court and the Trial Court were quashed and set aside. The appeal was allowed granting injunction.

9. In the case of *Patilbua Pandu Landoe vs. Sadashiv Vithoba Kamble and others* in para 19, the Court was dealing with a suit filed by a stranger and not by a co-parcener and in that view this Court finds that the judgment of *Patilbua Pandu Landoe vs. Sadashiv Vithoba Kamble and others* is not applicable on the facts. The judgment in the case of *Maharwal Khewaji Trust (Regd.) vs. Baldev Dass*

was also in the facts of the case. In the present case, this Court finds that the learned Appellate Court has considered the prima-facie case by going into the details of the merits. Even the Trial Court has concluded that issue and has dismissed the suit. Though it is pointed out by the learned Advocate for the petitioner that though the Trial Court has held against him however, the findings recorded in respect of mutation entry No. 253 taken on the basis of partition.

10. Thus, the prima-facie case is not made out and this Court is not much convinced by the said argument. For all the above reasons, this Court finds no perversity as pointed out by the order passed by learned Appellate court for interference at the hands of this Court. In view of the same, this Court finds that there is no merit in the petition. Hence following order :

ORDER

- i. The petition stands disposed of.
- ii. The Appellate court however is directed to decide the

appeal within period of six weeks from today, as the petition is pending since 2019.

iii. At this stage, the learned Advocate for the petitioner seeks extension of interim relief since same is running in his favour.

iv. At his request, interim relief to continue for three weeks from today.

(KISHORE C. SANT, J.)

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