



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

13 WRIT PETITION NO. 9826 OF 2025

ARUN PANDITRAO DESHMUKH
VERSUS
ANKUSH PANDITRAO DESHMUKH AND OTHERS

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Advocate for the Petitioner : Mr. P.K. Deshmukh
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CORAM : ARUN R. PEDNEKER, J.

Dated : September 08, 2025

PER COURT :-

1. Heard the learned counsel for the petitioner.
2. By way of present writ petition, the petitioner challenges the impugned order dated 27.2.2017 passed by the learned Jt. Civil Judge, J.D. Kallamb on applicaion at Exh. 301 in R.C.S. No. 173/1994 and the impugned order dated 25.2.2025 passed by the learned District Judge-1, Kallamb in Misc. Civil Appeal No. 68/2023 whereby the appeal filed by the petitioner/applicant against the order passed by the trial Court, dismissing the application filed for striking out the defence of the defendants is dismissed by the Appellate Court. Hence, the present writ petition is filed.
3. The learned counsel for the petitioner submits that the petitioner has filed suit bearing R.C.S. No. 173/1994 for partition in the year 1993 against the original defendant Nos. 1 to 7 and that application for temporary injunction was also filed against the respondents praying therein that during the pendency of the suit, the suit property shall not be alienated or no third party rights be created in favour of third party. The said application was rejected on 12.9.1997. Thereafter, Misc. Civil Appeal No. 100/1997 was preferred against the order of the trial Court dated

12.9.1997. The learned District Court by order dated 10.6.1999 has set aside the order below Exh. 37 and respondents are restrained by ad-interim injunction not to sell or create a third party interest in the suit properties, trees standing thereon and electric motors till the decision of the suit. Thereafter, the petitioner has filed application for striking of the defence of the defendants. The same is dismissed by the Trial Court as well as the appellate Court. Hence, the present writ petition is filed.

4. The learned counsel appearing for the petitioner submits that defendants have violated the injunction order and as such, the defence of the defendants ought to have been struck down in terms of provisions under Order 39, Rule 11(1) of C.P.C. The learned counsel relying upon the judgment of this Court in case of **Ganpat Shankar Waghmare Vs. Smt. Anjalibai Rao Waghmare and Anr., reported in 2001(2) Mh.L.J. 756** and judgment of Hon'ble Supreme Court in the case of **Asha Rani Gupta Vs. Vineet Kumar reported in 2022 SCC OnLine 829** submits that once there is violation of the interim orders passed in terms of Order 39, Rule 11 (1) of C.P.C. the Court was bound to strike down the defence of the defendants.

5. On perusal of the record, it is seen that the sale deeds were executed on 16.5.1995 and 21.4.1995. The learned counsel for the petitioner has not disputed that the said transaction took place between the defendants and the purchasers on 16.5.1995 and 21.4.1995. The Court has observed that the transaction of transfer of suit lands has already taken place before the injunction order was passed. The learned counsel for the petitioner submits that application for injunction was filed at the time of filing of the suit in the year 1994 and that ultimately the same was allowed by the appellate Court i.e. the District Court in the year

1999 and therefore, injunction would run from the date of application and it has to be presumed that injunction was enforceable from the date of application and there is violation of the injunction order.

6. I am not in agreement with the submission made by the learned counsel for the petitioner. The order of injunction will come into force from the date of passing of the order of the District Court whereby the learned District Court has restrained the respondents not to create the third party interest in the suit property. Considering the above, I see no reason to interfere in the impugned orders passed by the learned District Court and the law cited by the learned counsel for the petitioner would not come to the aid of the petitioner as there is no violation of the orders passed by the Courts below. Considering the same, no case is made out to interfere in the impugned order. The writ petition is accordingly dismissed.

(ARUN R. PEDNEKER, J.)

ssc/