



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 WRIT PETITION NO. 11964 OF 2025

SAMINDRABAI ISHWAR POLE

VERSUS

THE STATE OF MAHARASHTRA THROUGH THE COLLECTOR AND OTHERS

...

Advocate for the Petitioner : Mr. N.P. Patil-Jamalpurkar

AGP for Respondent/State : Mr. Rajdeep D. Raut

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CORAM : ARUN R. PEDNEKER, J.

Dated : September 30, 2025

PER COURT :-

1. Heard.
2. The petitioner/plaintiff challenges impugned order dated 21.11.2023 below Exh. 5 in RCS No. 312/2023 passed by the learned Civil Judge, Senior Division, Gangakhed, rejecting the application filed for temporary injunction.
3. It is the case of the petitioner/plaintiff that the suit property is ancestral property of herself and the defendant Nos. 4 to 11 and she has lawful share in the suit property. The defendant Nos. 4 to 11 got illegally decree in RCS No. 142/1983 behind the back of the petitioner and she was not impleaded as necessary party. Defendants filed execution proceeding in RCS No. 142/1983 and got their name mutated as per the decree. The plaintiff sought injunction against the effect of mutation entry.
4. The trial court held that the petitioner is aware of the partition suit and the suit is decided on 25.8.1986. The learned counsel for the petitioner submits that the decree is obtained by fraud and that there is no question of limitation if fraud is played upon the party. The learned counsel

submits that the petitioner being a lady, has lawful right in the joint family property. The learned counsel relies upon section 6 of the Hindu Succession Act and contended that petitioner has right in joint family property. However, explanation of sub-section (5) of section 6 of the Act is as under :-

"6. Devolution of interest in coparcenary property.-

(1)

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation. -For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court."

5. In the instant case, it appears that the suit for partition is filed in the year 1983 and decided on 25.8.1986. Prima facie submission of the petitioner is that she was not made party and fraud was played upon her cannot be accepted as at the relevant time the amendment was not in force and there is no reason that the petitioner could have been deliberately kept out from the joint family property. No case is made out.

6. With the above observations the writ petition is dismissed.

(ARUN R. PEDNEKER, J.)

ssc/