



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

WRIT PETITION NO. 15552 OF 2023

Ramakant Bhanudas Sonkamble

.. Petitioner

Versus

Ajay Bhanudas Sonkamble and others

.. Respondents

Mr. Vivek V. Bhavthankar, Advocate for the Petitioner.

Mr. V. M. Maney, Advocate for Respondent Nos. 1 to 3.

CORAM : KISHORE C. SANT, J.

DATED : 24th JANUARY, 2025.

P. C. :-

. Heard the parties for some time.

2. This petition is filed by defendant in the suit which is filed by the present respondents. It is the case of the petitioner that, in the suit respondent Nos. 1 and 2 are son and daughter of respondent No. 3. The petitioner - defendant No. 1 happens to be step brother of respondent Nos. 1 and 2 and step son of respondent No. 3. The suit property is joint property of the family. The petitioner by deceitful means got one document executed from the father of respondent Nos. 1 and 2 and the petitioner styled as gift deed in respect of the suit land. Though the present respondent No. 1 signed the document, he has signed this only as a witness and he was not aware of the contents of

the document. Now the petitioner has started construction on the suit land by demolishing the house property on the suit land. The respondents allowed him to demolish the house with clear understanding that after construction, all the parties will have share as per their right. However, later on it is found that the petitioner is making construction only for himself and is likely to create third party interest. Thus, on all these grounds a suit is filed which is still pending. Application below Exh. 5 of the respondents came to be rejected. Against that, the respondents filed Misc. Civil Appeal. In the Misc. Civil Appeal, the learned District Judge-2, Ambajogai has allowed the misc. civil appeal and restrained the petitioner from creating third party interest and from carrying out further construction on the suit property. Thus, the petitioner is before this Court.

3. It is the case of the petitioner that, there is a gift deed executed by the father in his favour. The respondent No. 1 had relinquished his right in the property by accepting an amount of Rs. 5,00,000/- (Rs. Five Lakh only). The petitioner has thus now become absolute owner of the property. The respondents are not concerned with the suit property. As on today, he has invested more than Rs. 40,00,000/- (Rs. Forty Lakh only) on construction. Almost 80% of the construction is completed. The learned District Judge has failed to appreciate this in

proper manner and has passed the impugned order. He prays for setting aside the impugned order.

4. The learned advocate Mr. Maney for respondent Nos. 1 to 3 vehemently opposed the petition. He submits that, the signature of the respondent No. 1 is obtained only as a witness and by keeping him unaware of the contents. He submits that, if the construction is allowed to be completed and if third party interest is created, it would cause irreparable loss. He submits that, the order is rightly passed and supports the same.

5. Having heard the parties and looking to the annexures it is seen that, there is already a gift deed in favour of the present petitioner. Though it is disputed as to whether the respondent No. 1 is a consenting party to the gift deed, the fact remains that he has signed the gift deed as witness. It is further submitted during the course of argument that, even the father has given affidavit in favour of the petitioner. When almost 80% of the construction is completed, it would not be in the interest of any of the parties to keep the said construction in such form. From the order of the learned District Judge it appears that, the order is mainly passed under the apprehension that third party interest is likely to be created. Sufficient care can be taken

by modifying the impugned order. The clause No. 3 of the impugned order be read as under :

“The defendant No. 1, his agents, servants or anybody acting on his behalf is hereby restrained from creating third party interest pending the suit. This shall be subject to the petitioner filing an affidavit before the learned Trial Court that, in case, ultimately the suit is decided against him, he shall not claim any equity and the construction would be at his own risk. The said affidavit shall be filed within a period of four (04) weeks from today in the learned Trial Court.

6. With this, the writ petition stands disposed of.

(KISHORE C. SANT, J.)

P.S.B.