

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7977 OF 2023

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Sonabai Raoso Dhotre

...Petitioner

vs.

Bhagwan Shiva Turuke and Others

...Respondents

Mr. Drupad Patil, for the Petitioner.

Mr. Chetan Patil a/w. Mr. Vishvesh Gadage, for Respondents.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 13, 2025

P.C:

1. Heard the learned counsel for the parties.
2. This petition under Article 227 of the Constitution of India, assails the legality, propriety and correctness of the judgment and order dated 21st January, 2023 passed by the learned District Judge, Kolhapur in Misc. Civil Appeal No. 84 of 2021, whereby the Appeal preferred by the petitioner/defendant No. 12 and Savitribai Mane/ defendant No. 13, against an order dated 1st March, 2021 passed by the learned Civil Judge, Senior Division in RCS No. 40 of 2019 restraining the defendants from alienating or creating third party interest in Gat No. 331/4 and 331/13 (the suit properties) till the disposal of the suit, came to be dismissed.
3. Shorn of superfluities the background facts are that, a suit for partition and separate possession, being RCS No. 524 of 1990, was instituted. During the pendency of the said suit, defendant Nos. 1

and 2 sold their undivided interest in the suit property to defendant Nos. 18 and 19 therein/ the plaintiffs in RCS No. 40 of 2019.

4. RCS No. 524 of 1990 was decreed on 29th September, 2003. Eventually, in RCA No. 449 of 2003, the appellate Court declared the shares of the parties in the suit land and directed that the portion of the lands from the suit properties, which were sold by the defendant Nos. 1 and 2 to defendant Nos. 18 and 19/ the plaintiffs in RCS No. 40 of 2019, be allotted to the shares of defendant Nos. 1 and 2 at the time of partition of the suit lands, as far as possible. Final decree proceedings are still subjudice.

5. In the aforesaid backdrop, the respondents No. 2 and 3 /the plaintiff Nos. 2 and 3 and Smt. Saraswati Turuke instituted a suit for perpetual injunction to restrain the defendants from causing obstruction to their joint possession and enjoyment of the suit properties and also from selling, alienating or creating third party interest in the suit properties. In the said suit, the plaintiffs/ respondents Nos. 2 and 3 filed an application for interim injunction. By an order dated 1st March, 2021 the learned Civil Judge was persuaded to partly allow the application and restrain the defendants from alienating or creating third party interest in the suit properties i.e. Gat No. 331/4 and 331/13 till the disposal of the suit. An appeal preferred by the petitioner and Savitribai Namdeo

Mane, defendant No. 13, came to be dismissed by the learned District Judge, Kolhapur.

6. The principal factor which weighed with both the Courts below was that since the parties are co-owners, no party can claim exclusive right to possess a particular portion of the suit properties unless there is partition of the shares in accordance with the decree passed in RCA No. 449 of 2003. If during the pendency of the said final decree proceeding the suit properties are alienated or third party interest is created therein, it would cause grave prejudice to the plaintiffs and would also lead to multiplicity proceeding and complications in the distribution of the shares in accordance with the decree passed in RCA No. 449 of 2023.

7. Mr. Drupad Patil, the learned counsel for the petitioner, submitted that it is rather incontrovertible that the petitioner is one of the co-owners of the suit properties. Under no circumstances, a co-owner can be completely restrained from exercising right of alienation. At best, the plaintiffs are entitled to enforce their remedies against the original defendant Nos. 1 and 2 at the time of partition of the share of defendant Nos. 1 and 2. Other co-owners cannot be precluded from exercising their right to alienate the property which is an incidence of ownership. Therefore, the impugned order deserves to be quashed and set aside.

8. Mr. Chetan Patil, learned counsel for the respondents, resisted the prayer on behalf of the petitioner. It was submitted that even after a decree for partition and separate possession attained finality, the defendants, in collusion with each other, had made an effort to have the properties partitioned by entering into a settlement keeping the plaintiff/respondents in the dark. Eventually, this Court had to intervene and exercise extraordinary jurisdiction, and by an order dated 2nd March, 2017, the compromise decree was quashed and set aside. It was declared that the pendency of RCS No. 110 of 2013 will not preclude the respondents/decree holder from filing execution proceeding for execution of the decree passed in RCA No. 449 of 2003 and the executing Court from proceeding with Darkhast. The defendants again made an endeavour to alienate the suit properties and create complications in the execution of the decree passed in RCA No. 449 of 2003. Therefore, the Courts below were justified in restraining the defendants, including the petitioner/ original defendant No. 12, from creating third party interest in the suit properties.

9. In the peculiar facts of the case, the approach adopted by the Courts below indeed appears justifiable. The trial Court correctly refused to grant injunction to restrain the defendants from causing obstruction to the possession of the plaintiffs over the suit

properties as there was no partition by metes and bounds, in the execution of the decree passed in RCA No. 449 of 2003. The status of the parties being that of co-owners or co-sharers of the undivided property, none of the parties could claim exclusive ownership and possession over the joint property and, thus, none could be enjoined. So far as, restraint on alienation, the learned trial Court was of the view that if the suit properties were alienated or third party interest created, it would not only affect the plaintiffs but it would also increase the complications in the division of the suit properties in pursuance of the decree passed in RCA No. 449 of 2003.

10. The aforesaid order of the trial Court, which found favour with the appellate Court, is in consonance with the principle of ensuring finality to litigation and avoiding multiplicity of the proceedings especially in the light of the fact that there was an attempt to defeat the rights of the parties under the decree passed in RCA No. 449 of 2003 by obtaining a consent decree, which was interdicted by this Court by an order dated 2nd March, 2017 in Writ Petition No. 10690 of 2013.

11. I do not find any justifiable reason to interfere with the discretionary orders passed by the Court below, in exercise of the supervisory jurisdiction.

12. Mr. Drupad Patil, the learned counsel for the petitioner submitted that, on the one hand, the petitioner/ defendant No. 12 has been restrained from alienating her share in the suit property and, on the other hand, the final decree proceeding is stalled by the respondents/ plaintiffs by preferring a revision against an order passed by the Divisional Commissioner, Pune in the proceeding proposing partition (Vatap Takta), before the State Government.

13. In the backdrop of the nature of the dispute between the parties, expeditious conclusion of the final decree proceedings arising out of the decree passed in RCS No. 524 of 1990 as modified in RCA No. 449 of 2003, is imperative for the conclusive determination of the rights of the parties. It would, therefore, be expedient in the interest of justice that the executing Court expeditiously decides the final decree proceedings arising out of the decree passed in RCS No. 524 of 2003 and modified in RCA No. 449 of 2003.

14. Thus, subject to the direction to the executing Court to decide the final decree proceedings expeditiously and within a time frame, the Writ Petition deserves to be dismissed.

Hence, the following order.

ORDER

1] The petition stands dismissed.

2] The Court seized with FD Application is requested to hear and decide the said application in accordance with law as expeditiously as possible, preferably within a period of six months from the date of communication of this order.

3] It is hereby made clear that the Court shall proceed with the FD Application on the basis of extant position of the proceedings before the Revenue Authorities, with regard to partition of the land, and the pendency of the Revision Application before the State Government shall not be an impediment for the Court to proceed with the final decree Application.

Petition disposed.

(N. J. JAMADAR, J.)