

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5979 OF 2024

Balkrishna Dhondiram Mandale ...Petitioner

Versus

Mahendra Dinkar Kambale and ors. ...Respondents

Mr. Ramdas Shelke, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED: 24th FEBRUARY, 2025

Order:-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to the judgment and order dated 4th January, 2025 passed by the learned District Judge in Misc. Civil Appeal No.75 of 2022, whereby the appeal preferred by the petitioner - plaintiff came to be dismissed affirming the order passed by the Trial Court in Regular Civil Suit No.854 of 2021 dated 26th July, 2022, whereby the application preferred by the petitioner for temporary injunction came to be rejected.
3. The petitioner had instituted a suit for declaration that the Sale Deed executed between defendant Nos.1 and 2 on 19th July, 2021 is illegal and void, it be cancelled and, in the alternative, defendant No.2 be ordered to execute the Sale

Deed of the said land in favour of the plaintiff and the consequential relief that defendant Nos.1 and 2 shall not cultivate the suit land.

4. The substratum of the petitioner's claim was that the suit property was the joint family property. Defendant No.1 was the stranger purchaser. Defendant No.2 had no right, title and interest to execute a Sale Deed of a specific portion of the suit land in the absence of a partition of the properties by metes and bounds between the co-owners.

5. The learned Counsel for the petitioner would urge that, though a decree for partition has been passed yet there was no partition by metes and bounds. It was the contention of the defendants that the plaintiff and the defendants were in separate possession of the suit land. However, that is not the situation at the site. Since the bar under the provisions contained in Prevention of Fragmentation and Consolidation of Holdings Act, 1947 also came into play, the Trial Court and the learned District Judge committed a manifest error in declining to grant injunction.

6. The Trial Court as well as the learned District Judge have recorded findings that the plaintiff was not in joint possession of the suit property with defendant No.2. The

Trial Court found that in pursuance of the decree passed in RCS No.328 of 1981, the plaintiff was in possession of his 1/4th share. The learned District Judge, after evaluation of the material on record, has also recorded a finding that all the co-sharers were cultivating their respective shares as per their convenience after the decree for partition. Thus, the plaintiff not having been found in *prima facie* joint possession of the suit property, was not entitled to injunction.

7. As regards the challenge to the legality and validity of the Sale Deed executed by defendant No.2 in favour of defendant No.1 and the preferential rights of the petitioner to purchase the suit property in the capacity of the co-owner, the learned District Judge was of the view that the said issues were the matters for final adjudication.

8. The view recorded by the Trial Court as well as the learned District Judge is based on objective material. The Courts have recorded the finding on the basis of material to show that the plaintiff has been in separate possession of his 1/4th share and the plaintiff was not in joint possession with defendant No.2. In the face of such concurrent findings albeit *prima facie*, this Court does not find any justifiable reason to exercise supervisory jurisdiction.

9. The petition, therefore, stands dismissed.

Since the suit was instituted in the year 2021, the learned Civil Judge is requested to hear and decide the suit as expeditiously as possible.

[N. J. JAMADAR, J.]