

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.18006 OF 2024

Hiraman Tukaram Khandve

...Petitioner

VS.

Dattatraya Dnyanoba Khandve and Ors.

...Respondents

Mr. Yatin Kochare a/w. Mr. Dinesh Shinde, for the Petitioner.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 27, 2025

P.C:

1. Heard Mr. Kochare, the learned counsel for the petitioner.
2. The petitioner/ defendant No. 3, has preferred this petition being aggrieved by the judgment and order dated 29th April, 2024 passed by the learned District Judge, Pune whereby the appeal preferred by the petitioner against an order of injunction passed by the trial Court came to be dismissed, affirming the order of the trial Court restraining the defendant from demarcating and merging the area which defendant No. 3 claimed to have acquired out of the suit properties, which the plaintiffs claim to be ancestral joint family properties.
3. Agricultural lands bearing Survey No. 106, Hissa No. 3 admeasuring 1 H 54 R and Survey No. 106, Hissa No. 2 admeasuring 77 R described in paragraph Nos. 1A and 1B of the plaint are the ancestral properties of the plaintiff and defendant No.

3 Vijay Khandve. Dnyanoba Khandve, the father of plaintiff and defendant No. 3 was the original holder of the said lands. After the demise of Dnyanoba, the suit lands devolved on the plaintiff, and defendant No. 3, the widow of Dnyanoba, Somnath, another brother of the plaintiff, and Sangita Dhole, the sister of the plaintiff. The said lands have not yet been partitioned by metes and bounds. The plaintiff, defendant No. 3 Vijay and the other coparceners have an undivided interest in the said lands.

4. On 12th January, 2012 the plaintiff and defendant No. 3 Vijay professed to transfer their undivided interest in the said lands. The plaintiff professed to transfer 40 R land and the defendant No. 3 professed transferred 20 R land.

5. Asserting that there was no partition by metes and bounds of the said land among the coparceners, respondent No. 1 instituted a suit for injunction. It was, inter alia, asserted that the defendant Nos. 1 and 2 were attempting to demarcate a contagious portion of 60 R land, though there was no partition by metes and bounds and a specific portion of the said land was not sold under the Sale Deed.

6. The trial Court was persuaded to grant temporary injunction observing, inter alia, that there was material to show prima facie that undivided interest was sold under the Sale Deed and defendant Nos. 1 and 2 were trying to erect fencing around 60 R land. Since

there was no partition by metes and bounds the remedy of the purchasers was to sue for partition and separate possession.

7. Being aggrieved, the petitioner/ defendant No. 3 preferred an appeal before the District Court. By the impugned order, the learned District Judge dismissed the appeal finding no fault with the view taken by the trial Court.

8. Mr. Kochare, the learned counsel for the petitioner, submitted that from the perusal of the recitals in the Sale Deed, it becomes evident that the plaintiff and defendant No. 3 claimed that they were in possession of a specific portion of the land admeasuring 40 R and 20 R, respectively, and under the Sale Deed the vendee/ defendant No. 1 was put in possession of the said portions of the land. The plaintiff and defendant No. 3 had also agreed to execute a Partition Deed and carve out the specific portions of the lands. Having received a valuable consideration under the Sale Deed, it was not open for the plaintiff to again sue for injunction alleging obstruction to his possession and enjoyment. Prima facie, from the perusal of the recitals in the Sale Deed, especially the description of the property, it appears that what the plaintiff and defendant No. 3 professed to sale was only undivided interest in the said land. It is true they professed to sale 40 R and 20 R land, respectively. However, that does not change the character of the property which

was sought to be conveyed. There are clear recitals in the Sale Deed itself that the said land was ancestral and coparcenary property and there were other co-sharers. In addition, the Sale Deed contains recitals in the nature of obligations on the part of vendors to have partition and demarcate the boundaries of the property sold thereunder.

9. In the face of these recitals, the submission of Mr. Kochare based on the representations made by the plaintiff and defendant No. 3 do not advance the cause of defendant No. 1. The Courts below have recorded findings based on the material that the plaintiff and defendant No. 3 still appear to be in joint possession of the said land. As there was no partition by metes and bounds, the principle of community of interest and unity of possession governed the situation. The act on the part of the defendant No. 1 to demarcate a specific portion of the said land, in the absence of the partition by meters and bounds, impaired the rights of the non-alienating coparceners. The remedy for the defendant No. 1 was to sue for the partition.

10. In the aforesaid view of the matter, this Court does not find such jurisdictional error or perversity in the concurrent findings of the Courts below in the exercise of discretionary jurisdiction so as to warrant interference in the exercise of writ jurisdiction.

11. The petition, therefore, deserves to be dismissed. Hence, the following order.

ORDER

The petition stands dismissed.

(N. J. JAMADAR, J.)