

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

WRIT PETITION NO. 1283 OF 2014

1. Laxman s/o Bhimrao Dhanade,
Age: Major, Occ: Agriculture.

2. Rambhau s/o Bhimrao Dhanade,
Age: Major, Occ: Agriculture,

Both R/o : Narayangaon, (Kasarwadi),
Taluka : Ambad, District: Jalna.

...Petitioners

versus

Yamunabai w/o Pratap Pawar,
Age: Major, Occ: Agriculture,
R/o : Narayangaon, (Kasarwadi),
Taluka : Ambad, District: Jalna.
At present R/o : Yashwant Nagar
near Gurukrupa General Stores,
Old Jalna, District : Jalna.

...Respondent

.....
Mr. S. S. Kulkarni, Advocate for petitioners.
Mr. R. B. Dale, Advocate for respondent.
.....

CORAM : N.W. SAMBRE, J.

DATE : 25TH FEBRUARY, 2015

ORAL ORDER :

. The petitioners to the present petition claims to be real brothers of one Kasabai-original owner and as such, are claiming in settled possession of the suit property, as Kasabai was not traceable for last ten years.

2. The defendants have come out with a case that Kasabai transferred the suit property in question to Janabai and Janabai transferred the same by registered sale deed in favour of Yamunabai respondent to the present petition. Based on title, the respondent filed Regular Civil Suit No. 145 of 2011 in the Court of Civil Judge, Junior Division, Ambad praying therein a decree for declaration and injunction that she is in peaceful possession of the suit property and present petitioners-defendants be restrained from disturbing her possession.

3. There is one more facet to the present litigation that the petitioners-defendants to the said suit filed another suit bearing Regular Civil Suit No. 127 of 2011 in the same Court praying therein simplicitor injunction. The claim for injunction against the respondent herein is based on their settled possession.

4. In the said suit, present respondent moved an application for grant of temporary injunction against the present petitioners, which came to be rejected, however in Misc. Civil Appeal No. 38 of 2013, the same came to be granted by learned lower appellate Court by an order dated 02/01/2014. As such, present writ

petition by the original defendants.

5. Learned Counsel for the petitioners-original defendants has sought to urge that learned District Judge has proceeded on wrong presumption, on appreciation of facts, as learned lower appellate Court has presumed that the suit by present petitioners-defendants i.e. R.C.S. No. 127 of 2011 is for preemption and whereas the said suit was for simplicitor injunction. He further urged that the appreciation of the same by learned lower appellate Court, which has direct bearing on the merits of the matter, has prompted the learned lower appellate Court to draw incorrect conclusion to grant injunction in favour of the respondent. He further urged that lower appellate Court has lost sight of the fact that the present petitioners-defendants are in settled possession, having stepped in the shoes of Kasabai, their real sister. So as to substantiate their contention, present petitioners-defendants relied upon the entries in 7/12 extract for the year 2010-2011 and 2011-12.

6. While countering to the above referred submissions, learned Counsel for the respondent-plaintiff has urged that learned lower appellate Court has rightly appreciated the factual matrix of the case particularly, basis for filing of R.C.S. No. 145 of 2011 i.e. registered sale deed from Kasabai in favour of Janabai and Janabai

in favour of present respondent-plaintiff Yamunabai. He submits that once there is a registered sale deed, which is not assailed by the present petitioners in any of the proceedings before the competent Court, it is not open for the present petitioners to oppose or seek any injunction against the respondent-plaintiff, as the plaintiff is true owner claiming her right by virtue of registered sale deed. In support of her contentions, she has sought to place reliance upon various mutation entries effected in favour of predecessor-in-title of the plaintiff namely Kasabai and then Janabai. Learned Counsel for the respondent further urged that, the suit by the defendants is for simplicitor injunction being not owner but based on the possession, is not tenable, which according to learned Counsel for the respondent will have direct bearing on the merits of the matter.

7. Having considered the rival contentions of the parties, it is noticed that, though learned Counsel for the petitioners was right in submitting that, learned lower appellate Court misconstrued the fact of filing of Regular Civil Suit No. 127 of 2011, which is for simplicitor injunction and not for preemption. However, in my opinion, same has hardly any bearing over the merits of the matter qua claim of temporary injunction made by the present respondent in her suit.

8. From the factual matrix, it reflects that, the suit filed by

present respondent is based on registered title deed in her favour. The source of title in favour of the respondent and possession claimed by the plaintiff is from same person i. e. Kasabai. Once, there is documentary evidence particularly registered sale deed on record, the balance of convenience will always lie in favour of such title holder. The claim of the petitioners that, they are in settled possession of the property by virtue of their relationship with Kasabai, in my opinion, cannot be appreciated to the detriment of the true owner in view of the existence of title deed in favour of the respondent.

9. The revenue entries that are sought to be pressed into service so as to support the case of the petitioners, so as to establish prima facie case is concerned, in my opinion, said entries for the year 2010-2011 and 2011-2012 are only for fiscal purpose and cannot be considered as strong evidence to conclude that the petitioners are in settled possession of the suit property.

10. One more facet of the matter, of which facts are already taken note in foregoing paragraphs is filing of the suit for simplicitor injunction by the present petitioners against the respondent. As the respondent is holder of title by virtue of registered sale deed, same creates doubt against present petitioners as regards their claim for

possession over the suit property as title is accompanied by passing over of possession. It is not in dispute that, by virtue of sale deed, the possession was parted to the respondent.

11. In that view of the matter, no case for interference in the order impugned granting injunction in favour of respondent by learned lower appellate Court, in the extra ordinary jurisdiction, is made out. Writ Petition, as such fails, same stands rejected.

[N.W. SAMBRE, J.]