

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2995 OF 2015

Rangnath Baliram Sonwane

PETITIONER

VERSUS

Saraswatibai Ramkishan Sonwane & others

RESPONDENTS

.....

Mr. M. M. Patil (Beedkar), Advocate for the petitioner

Mr. S. V. Mundhe, Advocate for respondent No.11

Mr. S. S. Kazi, Advocate for respondent No.18

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 23rd MARCH, 2015

ORDER :

1. Heard learned advocates appearing for the petitioner and respondents - caveators.

2. Application Exhibit-213 had been filed in Special Civil Suit No. 10 of 2011 seeking amendment to the pleadings, claiming recovery of possession of a portion of land bearing survey No. 416 situated at Suralwadi, Taluka-Gangakhed, contending that the plaintiff had been dispossessed on 30th January, 2015 by the defendants.

3. The suit has been instituted for declaration of title and

injunction on the basis of possession of the suit property. The trial court has rejected the application on 4th February, 2015, with reference to peculiar facts involved in the case. The plaintiff and his witnesses appear to have given evidence to the effect that the plaintiff has no possession over the suit land and have stated that there are houses constructed on the suit land and the houses are in the share of Ramkishan.

4. The suit was posted for final hearing on 31st January, 2015 and at that point of time, the application came to be filed stating that the defendants have dispossessed the plaintiff around 4.30 pm on 30th January, 2015. The trial court appears to have suspected motive underlying the application on 31st January, 2015 by which date this court, under order dated 22nd September, 2014 had directed the trial court to dispose of the suit. The trial court appears to have found that the application has not been moved *bona fide*.

5. Further, it can be seen that not only the application has been moved on the date when the suit was to be heard finally, but also that had been moved in the face of evidence, as has been referred to by the trial court. In such a situation, observations of the trial court cannot be said to be having no

basis. Learned advocates for the respondents further point out that the plaintiff does not want decision in suit on merits and is trying to avoid contest on the same. With this view, an application has also been moved pursuant to section 24 of Civil Procedure Code.

6. Having regard to the background of the case and the evidence as adduced by the parties so also considering the observations of the trial court, it is not a case wherein discretion shall be exercised in favour of the plaintiff. In view of aforesaid, I am not inclined to exercise powers of this court under Articles 226 and 227 of the Constitution of India. As such, writ petition stands rejected.

7. It is, however, made clear that observations, under the orders made during the interlocutory proceedings, by the trial court, shall not influence the outcome of the suit, while it come to decision on merits and on the basis of record. It is further made clear that if so advised and available in law, these orders should not preclude the plaintiff from claiming reliefs as are advised, in appropriate proceedings.

[SUNIL P. DESHMUKH, J.]