

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 2969 OF 2015

Vishnu Babu Raykar and others .. Petitioners
vs
Ramchandra Vitthal Raopadhye and anr. .. Respondents

Mr. Nitneen V. Gaware, Advocate for petitioners
Mr. Umakant Wagh, Advocate holding for Mr. A.V.
Hon, Advocate for respondent no. 1

CORAM : SUNIL P. DESHMUKH, J.
6TH OCTOBER, 2015

ORDER

1. Petitioners – original plaintiffs-appellants takes exception to order passed by learned District Judge, Ahmednagar, Aurangabad on 21-01-2015 in Miscellaneous Civil Appeal No.125 of 2014 filed by petitioners challenging order passed on 24-07-2014 by Civil Judge, Senior Division, Shrigonda, rejecting their application Exhibit-49 in regular civil suit no.308 of 2008.

2. Learned counsel Mr. Gaware appearing on behalf of the petitioners places heavy emphasis on the sale deed executed way back in 1957 to contend that the suit is based on deed of title to the property and since then they have been continuously in possession and presently, there is grave threat of demolition of their house in the suit property where they reside. He refers

to certain machinery, such as, earth movers in the field. He, under the circumstances, states that application for injunction which was not moved hitherto since no cause of action had arisen, had been moved by plaintiffs under Exhibit-49 before the trial court. However, the trial court has erroneously rejected the same under the order impugned. The appellate court as well has not considered the position properly and has wrongly dismissed the miscellaneous civil appeal. He, therefore, submits that petitioners' possession, as far as house property is concerned, needs protection.

3. Learned counsel for respondent no. 1 Mr. Wagh, however, submits that the petitioners cannot claim possession over the suit property at all. He submits, apprehension expressed by plaintiffs-petitioners has no foundation and photographs cannot be relied on. That apart, in the two litigations previously instituted, one at the instance of predecessor-in-title of the petitioners and another by present defendant, have been concluded in favour of defendant no.1. In the circumstances, he submits that claim by plaintiffs for possession has no basis.

4. Learned counsel for petitioners counters these submissions, submitting that previous litigations are pending before this court in second appeals. He, however, has been fair

enough to submit, there is no interim relief granted in the same.

5. After going through the orders passed by the trial court and the appellate court and having regard to the reasons as are appearing in paragraphs number 12 and 13 of the appellate court's order which read :

“ 12. In the given set of facts, there is no iota of evidence in the form of documentary evidence that despite of acquisition proceedings, its withdrawal and certification of the entries in the name of present defendant no.1, plaintiffs have ever continued their possession over the suit property or otherwise alleged house property, ever comes within the limits of suit Gat number. The 7/12 extracts on record, particularly column of cultivation therefrom supports the case put forth by the contesting defendants, on the assertion of actual physical possession over the suit Gat number. The plaintiffs who asserts their title and possession over the suit property on the strength of sale deed dated 26/3/1957 never raised dispute in respect of column of cultivation as prescribed under the provisions of Maharashtra Land Revenue (Rights of Properties and Maintenance) Rules, 1971. The rule 30 and 31 made therein, makes it obligatory to the person who claims to be in possession of the landed property, assessed to land revenue if other than the person whose name is appearing in the column of occupant has to

submit the application for holding inquiry in the form of XIV, prescribed under the rules. The village Talathi is supposed to submit the report thereof. Not only but that as per the provisions of said rules, the revenue officer not below the rank of Tahasildar is supposed to conclude the said entry within the period of said year and find out the person in possession of the property and to record his name in the column of cultivation accordingly. However, no such dispute was ever raised by the present plaintiffs in respect of suit Gat number. Therefore, prima-facie there is no evidence on record in favour of the plaintiffs to seek any relief pending the suit.

13. In addition thereof, after perusing the record and proceeding of the trial Court, it appears on record that trial has already begun. The plaintiffs have examined their witnesses and closed their oral evidence through pursis at Exh.44. The defendant No. 1 has also filed pursis at Exh.46 and closed his evidence. In short, the trial of the suit before learned trial Court has reached to its fag end and matter is likely to be decided in a short span, finally. In that context, I do not find any material on record to consider the prayer made by the plaintiffs, in Exh.49 for seeking the direction of maintaining status quo, at the site. In the given set of facts after perusing the reasons recorded by learned trial Court, in support of his judgment under appeal, I do find that while passing the order the learned trial Court has rightly used his

judicial discretion properly and with sound reasons. Therefore, in my view having is limited scope of interference with the Court of appeal, to interfere in the judicial discretion used by the Court of first instance, in my view there is no substantial error on record, the Court of appeal to have interference in the order passed by the Court of first instance. With these discussion, I answer point No.1 in the negative, point No. 2 in the affirmative and point N. 3 as does not survive.",

I do not think that this is a fit case wherein indulgence is possible in favour of the petitioners.

6. Writ petition as such stands rejected. Looking at that the evidence in the suit appears to have been led before the trial court, the matter is ripe for hearing and as such, I deem it appropriate that the trial court proceeds with hearing of the suit as expeditiously as possible and decide the same preferably within a period of three months from the date of receipt of writ of this order.

SUNIL P. DESHMUKH, J.

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