

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

APEAL FROM ORDER NO. 24 OF 2013
WITH CA/3299/2013 IN AO/24/2013

MARUTI NARAYAN VANNAM

VERSUS

GANGARAM NARAYAN VANNAM AND OTHERS
Advocate for Petitioner: Mr. Bedre Vinayak Sudhakar
Advocate for Respondent No.2 : Mr. S. Y. Mahajan

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CORAM : S. V. GANGAPURWALA, J.

DATE : 24th August, 2015

PER COURT :

1. Mr. Bedre, the learned counsel for the appellant submits that the appellant- original plaintiff has filed suit for partition and separate possession. Two rooms in respect of the said suit property are exclusively in possession of the plaintiff. Separate application for injunction was filed in respect of the said two rooms, restraining the defendants from interfering with the peaceful enjoyment and possession of the plaintiff. The trial Court rejected the said application.

2. Learned counsel submits that photographs have been placed on record which are not considered by the courts below. The two photographs produced show that they are bed rooms, they are open and not locked. Learned Counsel submits that the construction in the open space was made from the joint family fund. This aspect was also not considered. Learned counsel further submits that the documents vide list Exh.31 which were produced before the Court such as gas purchase receipt, mark

sheet, identity card of the son, entry card, which show the address as Yogdhan building, clearly establishes the possession of the plaintiff. All these aspects have been totally ignored. Even the affidavits filed on record have not been considered.

3. Learned counsel submits that even Exh.5 is not properly considered by the Court. While rejecting application Exh.5 erroneous conclusion has been drawn that Yashwant Printing press is not a joint family business. It is defendant no.2 who is not allowing the plaintiff to run the said business and defendant No. 2 is obstructing the enjoyment of the suit property.

4. Mr. Mahajan, the learned counsel for the defendants supports the order and submits that while deciding the temporary injunction application Exh.5, the court has already prima facie observed that Yashwant Printing Press, from where the amount is used for construction, is not a joint family business. The court has rightly considered the said aspects. While deciding Exh. 5, the Court has observed that the father was never the owner and proprietor of Yashwant Printing Press. Defendant No.2 is a registered proprietor of the said business.

5. With the assistance of learned counsel, I have gone through order.

6. The parties agree that the matter is now ripe for evidence. Since three years there is no order of injunction in favour of the plaintiff in respect

of the two bed rooms also. It is trite that any observations made at this stage would be only prima facie in nature. The Court, upon prima facie consideration, has rejected the application. Whether the funds for establishing Yashwant Printing Press were of joint family or not, will be conclusively decided only after evidence is led. There is no presumption that the property standing in the name of individual is a joint family property.

7. Considering the fact that for three years there is no order of injunction and that the Court has exercised discretion in a plausible manner, I am not inclined to entertain the Appeal from order.

8. The Court, where the suit is pending shall dispose of the suit, expeditiously, preferably within 9 months. It is made clear that the observations made while passing the impugned order are prima facie in nature and the Court would decide the suit on its own merits on the basis of evidence led.

9. The Appeal From Order is accordingly disposed of. No costs. Civil application also stand disposed of.

JPC

(S. V. GANGAPURWALA, J.)