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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3463 OF 2015

Abasaheb Dagadu Bhusal & Others

PETITIONERS

VERSUS

Ramnath Dagadu Bhusal & others

RESPONDENTS

.....
Mr. V. D. Hon, Sr. Advocate i/b Mr. A. V. Hon, Adv. for petitioners
Mr. V. S. Bedre, Advocate for respondent No.3
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 31st MARCH, 2015

ORDER :

1. By the present petition, the petitioners impugn order dated 25th February, 2015 of District Judge-1 Kopergaon in Miscellaneous Civil Appeal No. 49 of 2013 upholding order dated 21st August, 2013 of Civil Judge, Junior Division, Rahata rejecting Exhibit-5 and allowing Exhibit-27 filed by petitioners and respondent No.3, respectively, in Regular Civil Suit No. 187 of 2013.

2. Mr. Hon, learned senior advocate appearing for the petitioners, vehemently submits that during the course of hearing of Exhibit-5 and Exhibit-27, *status quo* was directed to

be maintained, and even after rejection of Exhibit-5 and grant of Exhibit-27, the appellate court had maintained *status quo* during the pendency of the Miscellaneous Civil Appeal. He, therefore, submits that ends of justice can be met with by directing disposal of the suit expeditiously and maintaining the situation as had been subsisting before Miscellaneous Civil Appeal was decided.

3. Mr. Bedre, learned advocate appearing for respondent No.3, however, contends otherwise. He submits that the trial court as well as the appellate court have recorded reasons based on *prima facie* material made available before them and further that the dispute has arisen only after the property had been purchased by respondent No.3. He submits that *status quo* as is requested, will be made use of to deprive respondent No.3 from enjoyment of legitimate rights and possession, which respondent No.3 is enjoying. He therefore, opposes the request.

4. On perusal of the impugned order, particularly paragraph No.11, recorded under the order of the appellate court, which can be conveniently reproduced herein below,

"11. On the following brief reasons, I held that interference in the impugned order is unwarranted. It is admitted fact that the suit property and part of it which has

been sold by the respondent No.1 Ramnath to respondent No.3 Usha is ancestral property. It was owned by father of the appellants No.1, 2 and the respondents No.1 and 2. They were four sons of deceased Dagadu. The appellant No.3 is widow of deceased Dagadu and appellant No.4 Kaushabai is her daughter. It is admitted fact that after M. E. No. 3841 name of four sons of deceased Dagadu was recorded to 7/12 extract. The name of his widow and daughter were shown in other right column. It is admitted fact that there was family arrangement between four sons, widow and daughter of deceased Dagadu, present appellants and respondents. It is admitted fact that they have separated and occupied separate piece of land each of them. It is further admitted fact that they have taken loan from various societies for showing their separate possession of piece of land. The main grievance of appellant original plaintiff that their brother Ramnath Dagadu Bhusal respondent No.1 sold his share to the respondent No.3 Usha Dilip Bhusal without there being metes and bound partition. The appellants did not have objection for sale of share by their other brother respondent No.2 Gangadhar to the respondent No.6 out of Gat No. 151. This factual position shows that there was a partition and separate possession of each of legal heirs of deceased Dagadu. Learned trial court rightly held that each of the legal heirs of deceased Dagadu have separate possession of their respective share. I found that there was a prima facie case in favour of the respondent No.3 Usha Bhusal for her application Exh.27. I do not found there was a existence of prima facie case in favour of appellants. Once respondent No.3 made out prima facie case, balance of convenience tilted in her favour. The respondent No.3

Ushabai has paid huge amount of Rs.88,00,000/- to respondent No.1 Ramnath Dagadu Bhusal as consideration of sale deed dated 08-01-2013. The respondent No.3 Ushabai is bona fide purchaser of suit land. Hence, I held that Ushabai will suffer irreparable injury which will not compensate in terms of money. The other rival contentions about right of daughter and question of metes and bound partition are kept open for final hearing on merit. It is settled proposition of law that once learned trial court exercise judicial discretion, this appellate court will not interfere in it unless there is mis-carriage of justice and abused of process of law. I do not found such case to interfere with the impugned order. Hence, I answer the point No.1 in negative for Exh.5 and in affirmative in respect of Ex.27 and points No.2 and 3 in favour of respondent No.3 Usha Dilip Bhusal."

and further, the reasons as are appearing in the trial court's order, contained in paragraphs No. 11 to 16 and 18 to 20, it cannot be gainsaid that on the material, as had been produced before the courts, the orders passed are erroneous. The trial and appellate courts appear to have exercised the jurisdiction judiciously adhering to the principles of jurisprudence, as is expected.

5. Both the courts have found that that after 1979, the property was recorded in the name of four brothers - sons of deceased Dagadu and names of Dagadu's wife and daughter

came to be recorded in other rights column. Since 1979 there are other incidents, giving indication that the brothers had been separated and staying in severance and dealing with the properties accordingly.

6. Taking into account aforesaid, I do not deem it appropriate to accede to the request of the petitioners, although Mr. Hon, learned senior advocate has tried to persuade. Having regard to aforesaid glaring circumstances appearing at least *prima faice*, the writ petition does not deserve any indulgence on the request being made on behalf of the petitioners.

7. Looking at the scenario, it would be expedient and in the interest of justice that the *lis* pending between the parties be proceeded with expeditiously and Regular Civil Suit No.187 of 2013 pending before Civil Judge, Junior Division, Rahata be disposed of as early as possible, preferably within a period of six months, since it is being intimated that issues have already been cast. Writ petition, as such, stands rejected with no order as to costs. It is further made clear that aforesaid observations shall not be deemed to be observations on merits.

[SUNIL P. DESHMUKH, J.]