

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

WRIT PETITION NO. 4742 OF 2015

1. Narayan s/o Keshav @ Kesu Kapse  
age 52 years, occupation : Agril.,
2. Ganesh Narayan Kapse,  
Age 27 years, occupation : Agril.,
3. Mahesh Narayan Kapse,  
Age 25 years, occupation: Agril.,
4. Mandabai Narayan Kapse,  
Age 49 years, occupation: Agril.,

All r/of Sawalivihar (B),  
Taluka Rahata, Dist. Ahmednagar

.. Petitioners /  
Orig. Defendants

**versus**

1. Subhadra Gangadhar Kapse,  
Age 57 years, occupation: Agril.  
and Business,
2. Jyoti Arun Aglawe @ Joyti Gangadhar  
Kapse, Age 26 years, occupation :  
House hold,

Both r/of Sawalivihar (B), Tq. Rahata,  
District : Ahmednagar

3. Bhimabai Kashinath Chavan,  
Age 67 years, occupation:  
Household,  
R/o At post Kalegaon Pati,  
Tq. Kopargaon, Dist. Ahmednagar

... Respondents/  
Resp.Nos. 1 & 2  
Orig. Plaintiffs

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Mr. Shailesh S. Chapalgaonkar, Advocate for petitioners  
Mr. C.K. Shinde, Advocate for respondents no. 1 and 2  
Mr. A. N. Patil, Advocate for respondent no. 3.

CORAM : SUNIL P. DESHMUKH, J.  
DATE : 9TH JUNE, 2015

Oral judgment

1. Rule. Rule made returnable forthwith. Heard the parties finally by consent.

2. Petitioners-original defendants no. 1 to 4 claim to be aggrieved by order dated 13-02-2015 passed by learned Civil Judge, Junior Division, Rahata, on Exhibit 59 in Regular Civil Suit No. 488 of 2013, granting police protection to plaintiffs-respondents no. 1 and 2 to secure implementation of the order passed on Exhibit 5 in said suit on 20-09-2014.

3. Succinctly stated, the scenario depicts, temporary injunction had been sought under Exhibit 5 by plaintiffs – present respondents no. 1 and 2 in respect of suit properties. The trial court, however, by order dated 20-09-2014 enjoined present petitioners who are original defendants from interfering with agricultural operations and harvesting produce in respect of the suit properties under clauses (A), (B), (C), (E), (EE) and (F) of plaint as well as restrained them from causing obstruction in respect of house property under clause (1-D) and shed in clause (1-F).

4. Petitioners against order of temporary injunction by trial court dated 20-09-2014 on Exhibit 5, are before the appellate court under Miscellaneous Civil Appeal along with application bearing number

60 of 2014 seeking condonation of delay in filing the same. It also appears that petitioners have applied for an interim order in said appeal, however, no orders as yet have been passed.

5. It further appears that despite the order of injunction, plaintiffs-respondents no. 1 and 2 were not being allowed to effectively enjoy the effect of temporary injunction against defendants, impelling them to file application (Exhibit-59) asking for police protection. The court has allowed said application under impugned order in respect of all the suit properties. As such, original defendants are before this court.

6. It is being submitted by Mr. Chapalgaonkar that the trial court has committed gross error in granting police protection for implementation of order on Exhibit-5, which is not warranted especially when petitioners have preferred appeal against order on Exhibit-5 which is pending. He submits, if at all there is any breach of the order passed on Exhibit-5, there are avenues open and it is incumbent on plaintiffs-respondents no. 1 and 2 to avail of and prosecute remedies as have been provided for breach of injunction and as such, impugned order is not sustainable. He further vehemently submits that while injunction had been granted in respect of particular properties referred to hereinabove, the trial court has committed an error in granting police protection in respect of all the suit properties.

7. Mr. Avinash Patil, learned counsel appearing for respondent no.3, supports the submissions on behalf of the petitioners.

8. Mr. C. K. Shinde, learned counsel appearing for respondent no. 1 and 2, however, contends that the trial court has taken stock of the situation and considering the submissions of the parties has granted application for police protection. Looking at the position as depicted on page 69, the court has passed the order.

9. Mr. C.K. Shinde, though has advanced submissions, has not been able to reason out as to why all the properties have been included in the order passed on Exhibit-59 granting police protection. He, therefore, gracefully concedes to the position that police protection is not warranted in respect of property under clause (1-D).

10. Plaintiffs are women and have been fighting for their rights to the properties after death of their husband and father respectively. The findings as are appearing in order on Exhibit-5 as on the date, have not been disturbed. In such a case, said order deserves to be followed until it is upset/altered/modified. As such, I am not inclined and I do not deem it appropriate to cause any disturbance to the order passed on Exhibit-59, under discretionary powers of this court. However, since the order of injunction does not relate to the property referred to in clause (1-D) of the plaint, order of police protection in respect of the same appears to be unwarranted and

untenable.

11. As such, impugned order on application (Exhibit-59) granting police protection to the extent it relates to property under clause (1-D) of the plaint stands set aside. Rest of the impugned order, however, remains undisturbed. It should be deemed that the order of the trial court to that extent is modified. As far as appeal filed by petitioners is concerned, It is open for them to prosecute appeal expeditiously.

12. Rule is made absolute to aforesaid extent. Writ petition stands disposed of accordingly.

SUNIL P. DESHMUKH, J.

pnd