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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4659 OF 2015

1. Ramdas Shankarrao Dhumal PETITIONERS
Age - 62 years, Occ - Agriculture

2. Aruna Ramdas Dhumal,
Age - 57 years, Occ - Agriculturist

Both R/o House No. 1036,
Near Deep Banglow, Model Colony, Pune

At present village Mamdapur
Taluka - Rahata, District - Ahmednagar

VERSUS

1. Ajay Shankarrao Dhumal RESPONDENTS
Age - 62 years, Occ - Agriculturist

2. Surekha Ajay Dhumal,
Age - 51 years, Occ - Business & Agriculture

Power of Attorney holder of respondent No.2
is respondent No.1.

Both R/o 305, Goregaon, Mumbai, East

At present village Kolhar,
Taluka - Rahata, District - Ahmednagar

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Mr. S.S.Chapalgaonkar, Advocate for the petitioners
Mr. G. G. Deshpande, Advocate for respondents

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 5th AUGUST, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with

consent of learned advocates for the parties.

2. The petitioners are defendants in Regular Civil Suit No. 131 of 2013 pending before civil judge, junior division, Rahata. The respondents are plaintiffs in said suit, seeking injunction in respect of the suit properties.

3. I have heard Mr. Chapalgaonkar, learned advocate for the petitioners and Mr. Deshpande for the respondents, for quite some time. Learned advocate for the petitioners has vehemently submitted that from perusal of the observations as are appearing in paragraph No.10 at page 31 of the order passed by the trial court on Exhibit-5, it can be easily gauged that the defendants are in possession of the suit property and as such, the order of the trial court ought not to have been reversed by the appellate court. He further goes on to submit that in spite of reliance being placed on several authorities, as have been referred to by the appellate court, the court has merely quoted ratios thereunder, however has failed to apply the same to the matter under consideration. He further contends that a cross appeal had been filed by the petitioners, about which there is no whisper in the impugned order.

4. Perusal of the order passed by the trial court shows that

the defendants *prima facie* appear to have accepted the position that the suit property was self acquired property of their father and that he had distributed the same amongst his sons and daughters under a will, pursuant to which mutation entry No. 5037 has been sanctioned. The plaintiffs claim to be in possession of the property concerned with reference to said mutation entry.

5. Mr. Deshpande, learned advocate for the respondents points out that observations, as are appearing under paragraph No.10 at page 31 of the order of the trial court are in respect of alleged events subsequent to the date of institution of the suit and would not have any bearing, as far as possession is concerned on the date of the suit. He, therefore, contends that the trial court was in clear error in taking the same into account and said error has been corrected by the appellate court by giving cogent reasoning. He refers to the observations of the appellate court in paragraph No. 7 of the impugned order, which read as under-

“Learned trial Court come to conclusion that after death of father of appellant No.1 and respondent No.1 there was partition and mutation entry No.3760 was affected. In this mutations entry suit land was shown in name of appellant No.1 and 2. In that mutation entry number respondents

were shown in possession of Gat No.23, Gat No. 171, Gat No.32 which were not suit land. The possession of respondents were shown to the different area out of Gat No.10/1, Gat No.18, Gat No.17, Gat No.33. In this mutation entry there is mentioned of last will of father of appellant No.1 and respondent No.1 Shankarrao Eknath Dhumal. The appellants did not produced last will of his father. The learned Trial Court wrongly read this mutation entry and hold that respondents are in possession of suit land. Ld. trial court come conclusion that appellant are not in possession of suit land. Similarly 7 X 12 extracts of suit land shows that appellants are in possession of suit land showing their possession as Khud (self). The another M.E. No. 5037 shows that present appellants are in possession of suit land Gat No.10, Gat No.17, Gat No.33. The respondents have shown in possession of 1 H 82R out of Gat No.10. The cultivation of area of respondents out of Gat No.10, Gat No.17, Gat No.33 not specified in this revenue record. It did not help the case of the respondents they are in possession of the suit land. In partition between appellant No.1 and respondent No.1 Gat No. 17, Gat No.33, Gat No.18 went in sharer appellant No.1 by M. E.No.8888. Similarly Gat No.236, 306 situated at Puntamba went in share of respondent No.1. The other document pertaining RCS No.131/2013 shows possession of appellant of suit property. Learned Trial Court merely considered the affidavit of adjacent occupants of suit land namely Gangadhar Pavlas Thorat, David Mohan Kadam, Kevram Uttam Sasane, Balasaheb Kadam, about possession of Respondent of suit land. Suit land is separate share of appellants with their possession. Learned trial Court wrongly held that appellants are not possession of

the suit land. On this prime question intervention of this court is necessary. There is a possession of appellants they are entitled for interim injunction as prayed. Hence I held that appellants have proved prima facie case for grant of injunction as prayed.”

6. Having regard to the submissions and the material which has been considered by the courts below, the observations as reproduced herein above, cannot be said to be outside facts asserted by parties. It has all the undertone that the contentions being considered under the cross appeal. In such a case, the impugned order is not liable to be interfered with under the discretionary powers of this court.

7. As such, the writ petition is not being entertained and stands dismissed. Rule stands discharged.

8. At this stage Mr. Chapalgaonkar, learned advocate earnestly urges that the interim order passed in this petition in the shape of *status quo* be continued. However, having regard to aforesaid reasons, I am not inclined to accede to the request and as such, the request stands rejected.

9. However, having regard to relationship between the parties and the contest, it would be expedient that Regular Civil Suit No. 131 of 2013 pending in the court of Civil Judge, Junior Division,

Rahata be proceeded with and disposed of expeditiously, preferably, the same be dealt with within a period of eight months from the date of receipt of writ of this order.

[SUNIL P. DESHMUKH, J.]

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