

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5488 OF 2015

BALU ATMARAM DEORE AND OTHERS
VERSUS
SUKDEO ATMARAM DEORE

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Advocate for Petitioners : Smt. Deshmukh C.S.
Advocate for Respondent : Shri Patil Pradip R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 22, 2015

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PER COURT :-

1. Heard learned Advocates for the respective parties.
2. The respondent is the original plaintiff in RCS No.248 of 2014. Petitioner No.1 and the respondent are two brothers out of five siblings. Lands Survey Nos. 384 and 385 are said to be an ancestral property, which has been partitioned amongst these siblings in 1992.
3. It is not in dispute that the land S.No.384/1 was apportioned to the share of the petitioner No.1 and lands S. Nos. 384/3 and 385/1 have been apportioned to the share of the sole respondent.
4. It is stated that in 2010, the petitioner No.1 has planted pomegranate trees in the area admeasuring 60 Ares in land S.No.384/1. Some dispute arose between the parties, leading to the institution of RCS No.248 of 2014. Application Exhibit 5, filed by the respondent, under Order

XXXIX Rule 1 of the CPC, was allowed by order dated 10.11.2014 and injunction was clamped on the petitioners. The petitioners were thus restrained from interfering with the lands S. Nos. 384/3 and 385/1 to the extent of drawing of water by the respondent / plaintiff from the well situated in the said lands.

5. The petitioners preferred Misc. Civil Appeal No.66 of 2014, with an application below Exhibit 16, praying for certain reliefs at the interim stage. The application was rejected and the hearing of the Misc. Civil appeal is expedited. The petitioners have expressed an apprehension that the pomegranate trees are likely to be harmed by the respondent.

6. Shri Patil, learned advocate has taken instructions from the respondent, who is present in the Court and a statement is made on such instructions, that the Misc. Civil Appeal be decided expeditiously within two months and till then, the respondent, who has never attempted to harm the trees, shall also not do so. He, however, submits that the impugned orders ought not to be interfered with lest the petitioners are likely to take undue advantage under the pretext of relief being granted by this Court.

7. Smt. Deshmukh learned Advocate submits that the appeal could be decided within a time frame and the statement of the respondent be recorded.

8. In the light of the above, this petition is disposed off without causing

any interference in the impugned orders by recording the statement of the respondent that no harm is likely to be caused or would be caused to the pomegranate trees, as the respondent has never attempted to do so in the past.

9. In the light of the above, the learned District Judge, Dhule shall decide Misc. Civil Appeal No.66 of 2014 as expeditiously as possible and preferably on/or before 29.8.2015 on its merits. The appeal Court shall reject adjournment motions at the behest of the litigating sides in the event it is convinced that an adjournment is sought on unreasonable or frivolous grounds.

(RAVINDRA V. GHUGE, J.)

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