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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7933 OF 2015

1. Gajanan s/o Shankarrao Dhumal PETITIONERS
 Age - 72 years, Occ - Agriculturist

2. Nita Sunil Patil,
 Age - 53 years, Occ - Agriculturist

R/o Akola, District - Akola
 Through General Power of Attorney
 Gajanan Shankarrao Dhumal
 Age - 72 years, Occ - Agriculturist
 Respondent No.1 R/o Kolhar Bk
 Taluka - Rahata,
 District - Ahmednagar

VERSUS

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

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

Both R/o Village Mamdapur
 Taluka - Rahata, District - Ahmednagar

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Mr. G. G. Deshpande, Advocate for the petitioners

Mr. S.S.Chapalgaonkar h/f Mr.Sachin Deshmukh for respondents

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 5th AUGUST, 2015

ORAL JUDGMENT :

1. Having regard to appearance put in by Mr. Sachin Deshmukh on behalf of caveator – respondent No.1, Mr. S. B.

Ghute and Mr. Milid Patil, learned advocates seek discharge from appearance in the matter.

2. As such, Mr. S. B. Ghute and Mr. Milind Patil, learned advocates stand discharged from appearance on behalf of respondent No.1.

3. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

4. After hearing learned advocate Mr. G. G. Deshpande, for the petitioners and learned advocate Mr. Chapalgaonkar for respondents it appears that the petitioners-plaintiffs purport to be aggrieved by concurrent orders passed by the trial court and by the appellate court dated 25th May, 2015 and 24th June, 2015, respectively, wherein plaintiffs' request for temporary injunction on Exhibit-5 in Regular Civil Suit No. 151 of 2015 pending before Civil Judge, Junior Division, Rahata stands rejected.

5. Ostensibly, it appears that the petitioners, who are plaintiffs in Regular Civil Suit No. 151 of 2015 stake claim to suit property, through a will (which is claimed to be oral one) of mother of plaintiff No.1 and defendant No.1 who are brothers. Though Mr. Deshpande, learned advocate for the petitioners

relies on some document in respect of partition in 1986, the courts have considered that on such a slender theory of oral will, without the same being established on evidence, otherwise co-owners are not liable to be enjoined from enjoyment of the property concerned. The courts, on the basis of material before them, have *prima facie* concurred that the plaintiffs have not been able to establish the three ingredients required for injunction.

6. The orders appear to have been passed after taking into account the background and legal aspects as are required, which at this juncture cannot be termed as perverse. In their discretion, the courts have refused to grant injunction.

7. Under the circumstances, I am not inclined to exercise discretionary powers available to this court under writ jurisdiction.

8. As such, writ petition stands dismissed. Rule stands discharged.

9. However, having regard to relationship between the parties and the contest, it would be expedient that Regular Civil Suit No. 151 of 2015 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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