

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7322 OF 2015

1. Ravindra Digambar Mahajan
Age : 60 years, Occup- Agri.,

2. Vallabh Digambar Mahajan,
Age: 66 years, Occu. Agri.,

R/o : Both R/o Karki Tq. Muktainagar,
Dist. Jalgaon.

3. Digambar Mahadu Mahajan
(Died Through L.Rs.
Petitioners No. 1, 2 and
Respondents No. 5 and 6)

...PETITIONERS

versus

1. Avantikabai Gambhir Mahajan,
Age: 75 years, Occu. Agri and Housewife,

2. Anang Gambhir Mahajan,
Age: 58 years Occu. Agri.

3. Rajendra Gambhir Mahajan,
Age: 56 years Occu. Agri.

4. Prakash Gambhir Mahajan,
Age: 54 years, Occu. Agri.
Respondent No. 1 to 4
R/o Karki, Tq. Muktainagar,
Dist. Jalgaon.

5. Suhash Digambar Mahajan,
Age: 55 years, Occu. Agri.,
R/o Karki, Tq. Muktainagar,
Dist. Jalgaon.

6. Indumati Prabhakar Chaudhari,
Age: 60 years, Occu. Household,
R/o Ainpur, Tq. Raver, Dist. Jalgaon.

...RESPONDENTS

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Mr. Prasanna N. Kutti, Advocate for Petitioners
Mr. A.G. Talhar, Advocate for respondents No. 1 to 4
Mr. R.B. Ade, Advocate for respondents No. 5 and 6.

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 23rd JULY, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for the parties finally, with consent.

2. After hearing learned counsel for the parties, position appears that impugned order dated 02-02-2015 in Miscellaneous Civil Appeal No. 38 of 2014 (old No. 74 of 2011) passed by District Judge - 1 Bhusawal has been rendered unsustainable for want of proper compliance of principles of natural justice.

3. Succinctly stated, petitioners - original plaintiffs filed Regular Civil Suit No. 19 of 2011 in the court of Civil Judge, Junior Division, Muktainagar, in Jalgaon district, seeking injunction against defendants No. 1 to 4. Application for temporary injunction Exhibit-5 filed by the plaintiffs, had been allowed by the trial court on 08-07-2011. After decision on Exhibit-5, respondents No. 1 to 4 – original defendants No. 1 to 4 had preferred Miscellaneous Civil Appeal No. 74 of 2011, before District Court, which at relevant time, had been located at Jalgaon. The Miscellaneous Civil Appeal had been pending for quite some time. Around 2015, due to bifurcation of working jurisdiction, matters from Muktainagar are transferred to Bhusawal. Suddenly, around July, 2015 as defendants No. 1 to 3 tried to meddle with and disturbed possession of the petitioners over the suit property, it was then realized by the petitioners that some order has been passed in Miscellaneous Civil

Appeal No. 74 of 2011.

4. It is the contention of learned counsel for the petitioners that although lawyer has been shown to be represented the petitioners, who were respondents No. 1 to 3 in Miscellaneous Civil Appeal, as a matter of fact, had appeared at Jalgaon and not at Bhusawal. This perhaps had not been realized by the court, while the impugned order came to be passed.

5. The respondents do not appear to be in a enough position to dispute the position that, it may be that, the petitioners had no notice of transfer of matter to Bhusawal, wherein Miscellaneous Civil Appeal came to be renumbered as 38 of 2014.

6. Having regard to aforesaid, the petitioners deserve an opportunity of hearing in Miscellaneous Civil Appeal No. 38 of 2015.

7. Mr. Talhar, learned counsel for respondents No. 1 to 4 purports to make out a point that whole dispute can really be resolved, if parties undertake not to meddle with lands survey No. 12 of the petitioners and survey No. 10 of respondents No. 1 to 4 which can be brought about by measurement of lands. Such a request can be made to the district court, when it considers Miscellaneous Civil Appeal.

8. In order to afford opportunity of hearing to the parties before appellate court at Bhusawal, I deem it appropriate to set aside the impugned order.

9. Writ petition stands allowed. As such, impugned dated 02-02-2015 in Miscellaneous Civil Appeal No. 38 of 2014 passed by District Judge – 1, Bhusawal stands set aside. Miscellaneous Civil Appeal No. 38 of 2014 stands restored to its position as had been subsisting before 02-02-2015. Parties before this court graciously agree to appear before the appellate court at Bhusawal on 03-09-2015 obviating notices to the parties. Parties shall abide by the schedule as may be fixed by the appellate court. The appellate court having regard to pendency of the appeal, shall dispose of the same, as early as possible, preferably within a period of eight weeks, from the date of receipt of writ of this order. It should not be deemed that this order has been passed on merits of the case and the appellate court shall not get influenced by observations in this order. All points are kept open.

10. Rule is made absolute in above terms. Writ petition stands disposed of accordingly.

Sd/-
(**SUNIL P. DESHMUKH, J.**)

MTK