

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

WRIT PETITION NO. 9106 OF 2015

Namrata Ganeshrao Shinde and another .. Petitioners

vs

Bhanudas Jaiwantrao Kadam and another .. Respondents

Mr. Ravindra B. Narwade Patil, Advocate for petitioners

Mr. S. S. Gangakhedkar, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.
9th September, 2015

ORDER:

1. Heard learned counsel for the parties.
2. Petitioners-original plaintiffs have moved this writ petition against common order on Exhibits – 5 and 11 in regular civil appeal no. 17 of 2015 passed by *Ad-hoc* District Judge-1, Nanded on 17-04-2015 whereunder, both the parties have been directed to maintain status-quo.
3. Petitioners have instituted suit against present respondents bearing regular civil suit no. 40 of 2008 in the court of joint civil judge, junior division, Hadgaon, for declaration of ownership and injunction in respect of the properties involved in the suit.

4. During pendency of suit, under an order dated 05-07-2008, present respondents-defendants were enjoined temporarily from causing interference and disturbing plaintiffs' possession over land ad-measuring 1 hectare 6 aar out of survey no.142/1 situated at Gurphali, Tq. Hadgaon, District Nanded and grampanchayat house bearing No. 114. The plaintiffs claim the properties to be their ancestral properties whereas, defendants claim that defendant no. 1 (present respondent no.1) to be adopted son of Sayabai after the death of her husband.

5. Having regard to the revenue record and assertion with regard to adoption not being in consonance with the same, the trial court has by judgment and order dated 29-12-2014 decreed the suit to the extent of declaration, however, appears to have found respondents to be in possession with reference to the depositions of the adjoining land holders and the deposition of the revenue officer.

6. Against the decision of the trial court decreeing the suit partially, the plaintiffs were before the appellate court under regular civil appeal No. 17 of 2015 along with application Exhibit-5 for injunction, so also with reference to observations by the trial court, respondents had moved appellate court under Exhibit-11 seeking injunction against original plaintiffs-

appellants. Both the applications, Exhibits – 5 and 11, have been disposed of by appellate court by an order made on 17-04-2015 impugned in present petition, directing both the parties to maintain status-quo until further order.

7. The appellate court has referred to that the plaintiffs are the sole heirs and successors of Sayabai and, as such, have become owners whereas, the trial court has observed that the plaintiffs have failed to prove their possession over the suit property and that defendant no. 1 is found to be in possession of the properties in question and as such, the appellants as well as respondents have prayed for injunction against each other. The appellate court, having regard to aforesaid, felt it appropriate and accordingly directed the parties to maintain status-quo as stated earlier.

8. I have heard the respective parties for quite some length. Status-quo is unlikely to serve any purpose and would, in fact, lead to further litigations in various forms. The appellate court, under the circumstances, ought to have shown regard to the facts, events those occurred during pendency of the matter and its' bearing in matter and the legitimate claims of the parties with regard to possession.

9. Under the circumstances, the appellate court should

reconsider applications Exhibits – 5 and 11. For said purpose, impugned order dated 17-04-2015 on Exhibits-5 and 11 stands set aside. The matter stands relegated to appellate court for hearing on applications Exhibits – 5 and 11 afresh. Both the applications be decided on their own merits without getting influenced by aforesaid observations which have efficacy limited only for this order and no further.

10. Writ petition stands disposed of.

SUNIL P. DESHMUKH, J.

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