

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6999 OF 2014

- 1) Syed Moinuddin S/o Nooruddin Patel,
Age: 72 years, Occu: Agri.,
R/o Near Dhangar Bawli, Udgir,
Dist. Latur
- 2) Syed Saiduddin S/o Nooruddin Patel,
Age: 78 years, Occu: Agri.,
R/o Near Dhangar Bawli, Udgir,
Dist. Latur

...PETITIONERS

VERSUS

- 1) Syeda Saberabegum W/o Syed Abas Jahagirdar,
(Died) Through her Lrs.
- 1/A) Hamidabegum @ Kaniz W/o Shaikh Mehboob,
Age: 61 years, Occu: Household,
R/o Mohalla Shah Sailani, Gandhinagar, Udgir,
Dist. Latur
- 1/B) Bilkhisbegum W/o Syed Saiduddin,
Age: 56 years, Occu: Household,
R/o Kila Galli, Udgir,
Dist. Latur
- 1/C) Shamim Begum W/o Syed Moosa Hashmi,
Age: 52 years, Occu: Household,
R/o Indira Nagar, Jalkot Road, Udgir,
Dist. Latur
- 1/D) Syed Moosa S/o Syed Abbas Jahagirdar,
Age: 49 years, Occu: Service,
R/o Hazrat Raj Mohammed Dargah Road,
Udgir, Dist. Latur

- 2) Syeda Tahera Begum W/o Syed Mazheruddin,
Age: 55 years, Occu: Household,
R/o Kayawadi, Taluka Kandhar,
Dist. Nanded

(deleted as per order dated
27/01/2015 & 03/02/2015)

- 3) Shankar Narsingh Murkikar,
Age: 58 years, Occu: Agri.,
R/o Tirupati Housing Society, Udgir,
Taluka Udgir, Dist. Latur

- 4) Span Kishanrao,
Age: 55 years, Occu: Agri.,
R/o Nai Abadi, Udgir,
Taluka Udgir, Dist. Latur

- 5) Govind Dattatraya Bhure,
Age: 60 years, Occu: Business,
R/o Bhure Cloth Stores, Udgir,
Taluka Udgir, Dist. Latur

- 6) Shaikh Shaha Mohammad Nabi Saheb,
Age: 80 years, Occu: Business,
R/o Near Mohd. Masjid, Udgir,
Taluka Udgir, Dist. Latur
(deleted as per order dated
27/01/2015 & 03/02/2015)

- 7) Shaikh Noor Mohammad Shah Mohammad,
Age: 60 years, Occu: Service,
R/o Degloor road, Behind Saw Mill, Udgir,
Taluka Udgir, Dist. Latur

- 8) Shaikh Moinuddin Mohd. Ismail Jamu,
Age: 60 years, Occu: Business,
R/o Paigampura, Udgir,
Taluka Udgir, Dist. Latur
(deleted as per order dated
27/01/2015 & 03/02/2015)

- 9) Farid Ali Rehamat Ali,
Age: 42 years, Occu: Business,
R/o Azad Nagar, Udgir,
Taluka Udgir, Dist. Latur

..RESPONDENTS

Mr P.V. Mandlik, Senior Advocate, instructed by Mr S.A.P. Quadri,
Advocate for petitioners;
Mrs A.N. Ansari, Advocate for respondent Nos. 1/A to 1/D

CORAM : N.W. SAMBRE, J.

DATE : 7th April, 2015

ORAL ORDER :

The petitioners are plaintiffs in Regular Civil Suit No.49 of 2007, wherein a declaration of ownership and nullity of decree passed in Regular Civil Suit No.187 of 1990, dated 18th March, 1992, along with decree for perpetual injunction was prayed.

2. The decree passed in Regular Civil Suit No.187 of 1990 was confirmed up to this Court in Second Appeal No.523 of 2003.

3. It is the claim of the petitioners/plaintiffs that their suit came to be dismissed on 21st April, 2012, against which they have preferred Regular Civil Appeal No.23 of 2012 before the District Judge, Udgir. In the said appeal, an application for stay came to be rejected by an order dated 7th July, 2014 by the learned District Judge. Thus, the present petition.

4. Mr P.V. Mandlik, learned Senior Counsel appearing on behalf of the petitioners, while questioning the legality of the rejection of the prayer for

stay, would urge that the learned Court below, while dismissing the suit of the petitioners/plaintiffs has recorded wrong findings of fact. So as to canvass that the property survey no.4 about which the relief is claimed in the suit is concerned, according to him, was very much covered in the registered will placed on record at page 57. According to him, the said will which was executed on 13th January, 1992, was tendered for registration on 14th July, 2006 and in fact, was registered on 20th November, 2008, was suppressed by respondents herein. In addition to above, he would urge that in the event the appeal of the present appellant will be allowed, the property in question will not be available as the respondents might create third party interest in the suit property. He would further urge that the learned Trial Court has recorded wrong findings of fact by observing that survey no.4 was not the subject-matter of will. In addition to above, he would further urge that the hearing of the appeal can be expedited by directing the parties to maintain *status quo* in the matter.

5. Mrs Ansari, learned Counsel appearing on behalf of respondents no.1-A to 1-D, while opposing the prayer made by Mr Mandlik, would urge that the earlier suit, at the behest of the present respondent, has resulted into passing of a decree for partition and separate possession and the parties are striving for their right, i.e. execution of the said decree since

years together. She would further urge that twice the rights of the present petitioners are tested, that is to say, once in a suit instituted by the respondent and on second occasion when the present petitioners instituted Regular Civil Suit No.49 of 2007. According to her, Courts having noticed that the petitioners have no right in the suit property, the question of grant of interim relief is rightly decided by the learned Lower Appellate Court. According to her, the present writ petition deserves to be dismissed.

6. Having analyzed the submissions made by the respective parties, it is required to be noted that the Trial Court, while dealing with the issue brought before it in Regular Civil Suit No.49 of 2007, instituted by the petitioners, has framed the issues and answered the same, as under :-

Sr. No.	Issues	Findings
1	Do plaintiffs prove that their father Syed Nooroddin, on 13-01-1982 had transferred suit properties to them by execution of a will ?	In the Negative
2	Whether the suit is barred in view of principles of res-judicata, in view of the judgment & decree in RCS No.187/1990 ?	In the Negative
4	Is decree passed in RCS No.187/1990 is nullity & un-executable ?	In the Negative
5	Do plaintiffs prove that, they are in exclusive possession of the suit properties ?	In the Affirmative

6	Are plaintiffs entitle for declaration & injunction as prayed for ?	In the Negative
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7. So far as issue nos.1, 3 and 4 are concerned, while dealing with the same, the Court tested the theory put-forth by the petitioners about discovery of the will dated 13th January, 1982, which was registered prior to filing of the suit in question. The Court then has recorded finding that the land survey no.4 was not part of the will. If the said observations which are challenged by Mr Mandlik are tested in the light of the will referred supra, it is required to be noted that the survey number as is mentioned in the will, was partitioned earlier. The said survey number, as such, is not subject-matter of the will. It is also required to be noted that if the said survey no.4 was partitioned on earlier occasion, the said fact would have been definitely within the knowledge of the present petitioners, who are banking upon the contents of the said will.

One of the issues sought to be pressed by Mr Mandlik is that during pendency of the suit, there was an interim relief operating in favour of the present petitioners. According to him, once the interim relief was operating throughout pendency of the suit, it was expected of continuation of the same even in the appeal, as the appeal is continuation of the suit. The above referred contention of Mr Mandlik is liable to be rejected, particularly having regard to the fact that in earlier suit instituted by defendants, the decree for partition has attained finality in Second Appeal

and the petitioners have suffered an order of dismissal of the suit. This Court cannot lose sight of the fact that the defendants are striving hard for execution of decree for partition and possession passed in their favour for which they were waiting since long.

8. In that view of the matter, the learned Trial Court, in my opinion, decided the said issues which are considered by the Lower Appellate Court while dealing with the claim for grant of relief. The prayer for grant of interim relief is decided by the Court below by order dated 7th July, 2014, having regard to the above referred background.

9. It is also required to be noted that the judgment delivered by the learned Trial Court in Regular Civil Suit No.187 of 1990, which is subject matter of challenge in an appeal before the Lower Appellate Court at the behest of the petitioners, has already attained finality in Second Appeal No.523 of 2003, in favour of the present respondents. In the background of the fact that the present petitioners suffered the said decree, so also dismissal of their suit, in my opinion, no prima facie case could be noticed in their favour. Even if it is presumed that the appeal of the present petitioners is allowed in future, the consequences thereof will automatically follow. As such, no case for interference is made out.

10. In the result, the writ petition being sans merit stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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