

WRIT PETITION NO. 10400 OF 2015

versus

2. Respondents No. 1 to 3 - original plaintiffs in Regular Civil Suit No. 1165 of 2012 have claimed injunction and measurement of the suit property through Taluka Inspector of Land Records, Ahmednagar. Along with suit, plaintiffs had filed an application for temporary injunction. Present petitioners are defendants in the said suit. Plaintiffs claimed their possession over the suit property under sale-deed of 2010 and correction-deed in 2012.

3. The trial court has observed that there was previous litigation in respect of the suit land at the instance of present defendants No. 1 and 2 bearing Regular Civil Suit No. 264 of 2008 for partition, however, said suit has been dismissed, albeit, it appears that appeal therefrom is pending. At the appellate stage, it is reported that present plaintiffs and defendants in said suit had been directed to maintain the *status quo* i.e. not to effect any geographical change in the suit property.

4. The trial court in its order has observed that with the help of sale-deed and correction-deed, plaintiffs had given description of the suit property and revenue record, 7/12 extracts and mutation entry indicate that *prima facie* they have proved that they are in possession of suit property. The trial court has referred to that the ratio laid down in the case relied on by the plaintiffs before the trial court that the copies of documents can be referred to without formal proof, at this stage is helpful to the plaintiffs.

5. The plaintiffs are not just relying upon the sale deed, but also on the affidavit, 7/12 extracts and mutations in their favour in respect of suit property. The trial court had opined that plaintiffs have *prima facie* case and balance of convenience would lie in their favour and they would suffer irreparable loss in case application for temporary injunction is not allowed.

6. The appellate court as well observed in its order that after sale-deed, correction deed has been executed when mistake was noticed. The documents establish location of the suit land and no change in

geographical condition can be said to have been carried out under correction deed. The appellate court went on to observe that the appellants-petitioners herein have not placed on record any material to show that that suit land was being possessed by them and had come to their share in partition. Under the circumstances, the appellate court had overruled technical objection.

7. Learned counsel for petitioners though vehemently submits that grant of temporary injunction tantamounts to final relief, however, having regard to the relief claimed in the suit, and looking at that *prima faice* case, balance of convenience and suffering of irreparable loss having been considered by both the courts, in the suit of the nature such interim relief cannot be said to be absolutely without power of the court or for that matter uncalled for in the litigation.

8. Under the circumstances, having regard to the concurrent findings of both the courts at this stage, I am not inclined to entertain writ petition.

9. Writ Petition, as such, stands rejected. It would be expedient that suit is taken up for expeditious disposal.

Sd/-

(SUNIL P. DESHMUKH, J.)