

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5173 OF 2014**

Shridhar Anandrao @ Anant Patil & Ors.

..Petitioners

Vs.

Vasantrao Gorakhnath Patil (Mahadik) & Ors.

..Respondents

**Mr. G. S. Godbole i/b Mr. Yajuvendra Singh for the Petitioners
Mr. S. J. Chaurasia i/b M/s. Ashoka Law Firm for the Respondents**

**CORAM : R. M. SAVANT, J.
DATE : 22nd JANUARY, 2015**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 20-5-2014 passed by the Learned District Judge-1, Islampur, by which order, the Appeal filed by the Petitioners i.e. the original Plaintiffs being Misc Civil Appeal No.44 of 2014, came to be dismissed and resultantly the order dated 7-4-2014 passed by the Trial Court rejecting the application Exhibit 5 came to be confirmed.

2 The Suit in question being Regular Civil Suit No.37 of 2014 has been filed by the Petitioners/Plaintiffs for declaration, possession and for partition of the suit properties which are mentioned in the plaint and in the respective prayer clauses of the Suit. Suffice it to say at this stage that the

Plaintiffs are claiming through one Anandrao Patil whereas the Respondents/Defendants are claiming through one Gorakhnath Patil. The said Gorakhnath Patil is the adopted son of Nivrutti Patil. The said Gorakhnath was originally from the family of the Mahadiks. In the said Suit, the adoption of Gorakhnath is disputed inter alia on various grounds which have been mentioned therein which grounds relate to the customs relating to adoption, which prevailed in the community to which the said Gorakhnath belonged. It is on the said basis that the Plaintiffs are claiming reliefs in respect of the properties which are in possession of the Defendants i.e. the Respondents herein. The Plaintiffs have also founded the Suit on the basis that the properties are yet to be partitioned whereas the defence of the Defendants is that there is already a partition as evidenced by the two orders passed by the Tahsildar under Section 85 of the Maharashtra Land Revenue Code. The plea of partition which is taken by the Plaintiffs is in the alternative to the relief that the Defendants are not entitled to any property as the adoption of Gorakhnath itself is questionable.

3 In the said Suit, an application for temporary injunction Exhibit 5 came to be filed by the Plaintiffs. The Trial Court has by its order dated 7-4-2014 rejected the said application for the reasons mentioned in the said order. The Trial Court was of the view that the challenge to the adoption deed made after a period of 50 years was not bonafide and accepted the theory

propounded on behalf of the Defendants that there is a partition which is evidenced by two orders passed by the Tahsildar under Section 85 of the said Act.

4 The Plaintiffs aggrieved by the said order dated 7-4-2014, filed Misc Civil Appeal No.44 of 2014. The Lower Appellate Court reiterated the findings of the Trial Court in so far as the entitlement of the Plaintiffs to the discretionary relief of injunction and accordingly dismissed the Appeal by the impugned order. However, whilst so dismissing the Appeal, the Lower Appellate Court observed that the parties are in exclusive possession of their 1/2 share in the suit properties.

5 The above Petition had come up for admission before this Court on 11-11-2014 and after an exhaustive hearing, this Court had asked the Respondents to put on affidavit as to which portions of the suit lands they are in possession so that some pro-tem arrangement could be arrived at pending the Suit. An affidavit dated 18-11-2014 has accordingly been filed by one Vaibhav Patil, the Respondent No.3 herein. The Respondent No.3 has stated that the Respondents are in possession of 50% of the suit lands and the locations are also mentioned in the affidavit in respect of each of the suit lands. For the sake of ready reference, a statement prepared on the basis of the affidavit compiling the lands and the locations and the occupation of the

Respondents is reproduced hereinunder :

Sr.No.	Gut No.	Area Hectare-R	Dimension Hectare-R	Hissa Hectare- R	Location
1	20/2	5-07 Kh.0&13	12-25	Full	Eastern Side
2	51/2	0 & 55 Kh.0-55	3-25	Full	Southern Side
3	69-2	0-34	5-76	Full	West Side
4	112/1+2/2	0-21	3-25	Full	Eastern Side
5	113/1/1	0-61 Kh.0-16	2-67	Full	Southern Side
6	10/2	0-87 Kh.	2 & 31	Full	Southern Side
7	152/3	0-40	6-32	Full	Northern Side
8	181	1-23	7-14	Full	Eastern Side
9	154/1	0-27	3 & 81	Full	Eastern Side
10	42/9	0-02	0-28	Full	Northern Side
11	184/1/1	1-43	6-52	0.50 ps. Full	Western Side
12	42/6	0-02	0-25	Full	Northern Side
13	81/1	01/01/45	02/01/00	Full	Eastern Side

6 The fact that the Plaintiffs have 50% share in the lands cannot be disputed. The question is only as regards the entitlement of the Respondents

i.e. the Defendants to the balance 50% of the share. Hence to avoid acrimony and disputes between the Suit, it would be appropriate to arrive at some interim arrangement pending the Suit. Hence without prejudice to the rights and contentions of the parties as to whether there was a prior partition or partition by metes and bounds as also without prejudice to the rights and contentions in respect of the other issues which arise in the Suit. It would be just and proper as and by way of an interim arrangement, the Respondents would continue to cultivate the $\frac{1}{2}$ portion of the Suit lands as indicated in the affidavit of the Respondent No.3 and in respect of which statement appears in the instant order herein above.

7 In so far as the balance 50% is concerned, the Petitioners would be entitled to cultivate and derive income from the said 50% portion of the respective suit lands. Hence both the parties would be in possession and would cultivate their respective $\frac{1}{2}$ portions without prejudice to their rights and contentions and subject to the final outcome of the Suit. The Suit would undoubtedly be tried on its own merits and in accordance with law, uninfluenced by the interim arrangement as above.

8 The impugned judgments and orders passed by the courts below would accordingly stand substituted by the instant order. Both the parties would not create any third party rights in respect of the portions in their

respective possession and would keep the said portion in their possession till the disposal of the Suit.

9 The respective contentions of the parties in the Suit as well as the counter claim are explicitly kept open for being agitated before the Trial Court. With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]