

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8618 OF 2014

Govind Keshav Padalkar and another ... Petitioners
Vs.
Balwant Yashwant Mangade and others ... Respondents

Mr. Mithun M. Mahajan for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : 30TH JULY, 2015

P.C. :

Heard Mr. Mahajan, learned Counsel for petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, original defendants have challenged the judgment and order dated 20.06.2014 passed by the learned Civil Judge, Junior Division, Malkapur-Shahuwadi below exhibit-5 in Regular Civil Suit No.63 of 2014 as also the judgment and order dated 09.07.2014 passed by the learned District Judge-3, Kolhapur in Miscellaneous Civil Appeal No.177 of 2014. By these orders, the Courts below allowed the application filed by the respondents, hereinafter referred to as plaintiffs, and issued injunction against the petitioners, hereinafter be referred to as defendants, restraining them from obstructing possession of the plaintiffs over - (a) Gat No.32/28 admeasuring 1 Hectare, 66 Ares, (b) Gat No.40/2 admeasuring 3 Hectares, 15 Ares and (c) Gat No.3/4 admeasuring 0 Hectare, 11.1 Ares situate at Village Turukwadi, Taluka Shahuwadi, District Kolhapur (for short 'suit lands') till the final disposal of the Suit.

3. In support of this Petition, Mr. Mahajan strenuously contended that the Courts below committed serious error in allowing the

application filed by the plaintiffs. He submitted that on the date of institution of the Suit, defendants are in possession of the suit lands. He submitted that the suit lands were owned by one Kondi Bhiva Padalkar. Kondi died leaving behind son Dagdu and two daughters, namely, Muktabai and Chingubai. During his lifetime, Dagdu had executed Will in favour of Keshav on 06.05.2013. He submitted that Keshav is nephew of Dagdu. Defendants are claiming possession on the basis of the Will dated 06.05.2013 executed by Dagdu in their favour. Mr. Mahajan submitted that apart from that even the adjacent land holders have filed affidavits in support of defendants. In these affidavits, they clearly stated that defendants are in possession of the suit lands. He, therefore, submitted that the Petition requires consideration.

4. I have considered the submissions advanced by Mr. Mahajan. I have also perused the material on record. The question is whether plaintiffs establish their possession on the date of instituting the Suit. Perusal of the material on record prima facie indicates that plaintiffs No.1 and 2 are the children of Chingubai - one of the daughters of Kondi. Defendant No.3 is the grandson of other daughter Muktabai. As far as the trial Court is concerned, in paragraph 15, the learned trial Judge has considered 7/12 extracts of the suit lands. 7/12 extracts show that Dagdu was recorded as owner and possessor of the suit lands. Mutation entry No.2093 was made after the death of Dagdu. This mutation entry recorded Muktabai and Chingubai along with Dagdu as legal representatives of Kondi. The learned trial Judge noted that Dagdu as also his sisters – Muktabai and Chingubai expired. Defendants did not specifically deny relationship of plaintiffs' family. The learned trial Judge, therefore, held that prima facie, plaintiffs No.1 and 2 are the children of Chingubai and plaintiff No.3 is the grandson of Muktabai.

5. After the death of Dagdu, naturally, possession of the suit lands will be with the plaintiffs, though their names are not recorded in 7/12 extracts. Their claim of possession is supported by the affidavits of various persons. In paragraph 16, the learned trial Judge considered the Will dated 06.05.2013 on the basis of which defendants claim possession of the suit lands. The learned trial Judge observed that defendants have not brought any material to show that they are in possession of the suit lands on the basis of the Will dated 06.05.2013 at this stage. In paragraph 17, the learned trial Judge also observed that defendant No.1 claimed that Dagadu Padalkar was his cousin uncle. However, defendants have not given any genealogy on record and also did not produce any document to show relation between them. At this stage, contention of the defendant No.1 about the relationship between him and Dagdu is vague and ambiguous. In paragraph 18, the learned trial Judge considered the compromise entered into between the defendant No.1 and wife of Dagadu in R.C.S. No.116 of 2013 and observed that the said decree cannot be considered at this stage because the Suit was not contested on merits. The findings recorded by the learned trial Judge were confirmed by the learned District Judge.

6. In view thereof, I do not find that the Courts below have committed any error in exercising discretion in allowing application exhibit-5. It is not shown that the findings recorded by the Courts below are perverse being based on no evidence or that they are contrary to evidence on record. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)