

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9299 OF 2014

Sonabai Sidu Mhoprekar and others ... Petitioners
Vs.
Prabhakar Yeshwant Vidar and others ... Respondents

Mr. Tanaji Mhatugade for Petitioners.
Mr. A. R. Metkari for Respondents No.1 to 3.
Mr. Prashant P. Kulkarni for Respondent No.5.

CORAM : R. G. KETKAR, J.
DATE : 8TH JULY, 2015

P.C. :

Heard Mr. Mhatugade, learned Counsel for petitioners, Mr. Metkari, learned Counsel for respondents No.1 to 3 and Mr. Kulkarni, learned Counsel for respondents No.4 and 5 at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiffs have challenged the judgment and order dated 02.04.2014 passed by the learned Civil Judge, Junior Division, Shirala below exhibit-5 in Regular Civil Suit No.31 of 2014 as also the judgment and order dated 26.08.2014 passed by the learned District Judge-1, Islampur, District-Sangli in Miscellaneous Civil Appeal No.36 of 2014. By these orders, the Courts below dismissed the application exhibit-5 taken out by the plaintiffs seeking injunction restraining defendants from interfering with their possession over 2 Hectares 11 Ares land out of total area admeasuring 36 Hectares 10 Ares of land bearing Survey No.476 (Old Survey No.41) situate at Mouje Hattegaon, Taluka Shirala, District Sangli, more particularly described in paragraph 1 of the plaint (for short 'suit land').

3. In support of this Petition, Mr. Mhatugade submitted that in proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'Act'), on 13.12.1962, plaintiffs are not declared as deemed purchasers. He submitted that thereafter respondents No.1 to 3 herein filed proceedings under Section 70(b) of the Act before A.L.T., Shirala. By order dated 15.01.2014, A.L.T. allowed the application filed by respondents No.1 to 3 and ordered deletion of names of the plaintiffs in the column of 'Kulkhand' as also 'other rights' column in 7/12 extract. Aggrieved by that decision, plaintiffs preferred appeal before S.D.O., Walva. On 24.02.2014, S.D.O. ordered maintenance of status-quo. He submitted that the said appeal is pending. He further submitted that though the tenancy proceedings are decided against the plaintiffs, no material is brought on record by the defendants to indicate that they have obtained possession from the plaintiffs. In other words, he submitted that plaintiffs are in possession of the suit land, and therefore, the Courts below committed error in rejecting the application seeking injunction.

4. On the other hand, Mr. Metkari and Mr. Kulkarni supported the impugned order. They submitted that by order dated 13.12.1962, plaintiffs' claim that they have become purchasers under Section 32-G of the Act was turned down. In the proceedings initiated by respondents No.1 to 3 under Section 70(b) of the Act, the A.L.T. has ordered deletion of names of the plaintiffs from the column of 'Kulkhand' as also 'other rights' column as tenant in 7/12 extract. Though the S.D.O. had ordered maintenance of status-quo and the appeal is pending, having regard to the earlier order passed in 1962, which is not challenged by the plaintiffs, the Courts below found that the plaintiffs are not in possession. In fact, in paragraph 16, the learned trial Judge has noted that respondent No.6 had obtained requisite permissions for starting

windmill projects and if at this juncture, interim relief is granted, it will cause irreparable loss and hardships to the defendants, which cannot be compensated in terms of money. The learned trial Judge held that no prima facie was made out, balance of convenience does not lie in favour of the plaintiffs and that irreparable loss and hardship will cause to the defendants and accordingly, trial Court rejected the application.

5. The learned District Judge dismissed the Appeal. In paragraph 14, the learned District Judge observed that plaintiffs are claiming to be in possession of 2 Hectares 19 Ares out of 36 Hectares 10 Ares. However, there is no description of the suit land. It was further observed that from photographs produced on record, installation of windmills is in progress. In other words, defendants are in possession and not the plaintiffs. Thus, the Courts below prima facie found that plaintiffs are not in possession and rejected the application. After considering the material on record, I do not find that the Courts below committed any error in dismissing the application. 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.)