

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3616 OF 2015

Chandrakant Ganesh Chikurde (Vhaval) ... Petitioners
Vs.
Shashikant Ganesh Chikurde (Vhaval) and others ... Respondents

Mr. Amitkumar D. Sale for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 15, 2015

P.C. :

Not on Board. At the request of Mr. Sale, taken up for admission.

2. Heard Mr. Sale, learned Counsel for petitioner.
3. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 01.10.2014 passed by the learned 6th Joint Civil Judge, Junior Division, Sangli below exhibit 112 in Regular Execution Petition No.39 of 2012. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as judgment debtor No.14, for appointing Court Receiver in respect of the suit property.
4. Mr. Sale submitted that respondent No.1 instituted Appeal from Order No.1004 of 2010 in this Court challenging the order dated 12.03.2008 passed by the learned trial Judge below exhibit-92 in Special Civil Suit No.173 of 2002 restraining the respondent No.1 herein from executing the decree and taking possession. Appeal was allowed on 24.01.2012. Paragraph 6 of the order reads thus,

“6. In my view, it would be proper to set aside the impugned order dated 12.3.2008, allow the appellant to execute the decree, take possession of the suit property, of course subject to the

aforesaid suit. It will be equally proper to allow the respondent No.1 to file an appropriate interim application to protect the interest qua the said properties as the plaintiff is seeking partition to the said property. As and by way of interim arrangement, the appellant will have to be restrained from dealing with or dispossessing or parting with possession of the suit property as and when it comes in his hand after execution of the decree.”

5. Mr. Sale submitted that in pursuance of the liberty granted by this Court, respondent No.1 therein (petitioner herein), he took out application exhibit-112 for appointing Court Receiver for taking possession of the property in dispute. By the impugned order, the learned trial Judge rejected the application. Mr. Sale submitted that this Court, while allowing the Appeal, specifically reserved liberty to the petitioner herein to file an appropriate application to protect the interest qua the said properties as he is seeking partition of the said properties. Mr. Sale submitted that the petitioner herein has instituted Suit for partition and the same is pending. In order to protect his interest, this Court gave liberty to the petitioner for protecting his interest. He submitted that by appointing Receiver, interest of respondent No.1 and petitioner will be protected. The learned trial Judge, therefore, should have allowed the application.

6. I have considered the submissions advanced by Mr. Sale. I have also perused the material on record. Perusal of paragraph 6 of the order dated 24.01.2012 shows that after hearing both sides, respondent No.1 was allowed to execute the decree and take possession of the suit property which is subject to the Suit instituted by the petitioner. Petitioner was also permitted to take out appropriate application to protect his interest qua these properties in respect of which he is seeking partition. In my opinion, respondent No.1 has to execute the decree and take possession of the suit property first. It is also material to note that while deciding the Appeal from Order, respondent No.1 did not pray for

appointment of Receiver. In fact, this Court also restrained respondent No.1 herein from dealing with or dispossessing or parting with possession of the suit property as and when it comes in his hand after execution of the decree. In my opinion, this sufficiently protects the interest of the petitioner herein as admittedly, his Suit for partition is pending. Understood thus, no case is made out for appointment of the Receiver. It is made clear that the interim arrangement recorded in paragraph 6 of the order dated 24.01.2012 shall remain in force till the decision of Suit filed by the petitioner for partition. Order accordingly.

7. Liberty is reserved to the petitioner to apply for disposal of the Suit for partition in a time bound manner. If such application is taken out, the learned trial Judge will pass appropriate order in accordance with law.

8. Petition is disposed of.

(R. G. KETKAR, J.)

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