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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7280 OF 2015

Shri Vasant Laxman Pujari and others .. Petitioners

Vs.

Shri Shrihari Laxman Pujari and another .. Respondents

Mr.Rushikesh C.Barge, Advocate for the Petitioners.

Mr.Dilip Bodake, Advocate for the Respondents.

CORAM : R.G.KETKAR, J.
DATED : 18^h DECEMBER, 2015

P.C. :

. Heard Mr.Rushikesh Barge, learned Counsel for the petitioners and Mr.Dilip Bodake, learned Counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiffs have challenged the judgment and order dated 17/06/2015 passed by the learned Joint Civil Judge, Senior Division, Satara below Exhibit 5 in Regular Civil Suit No. 259 of 2015 as also the judgment and order dated 06/07/2015 passed by the learned District Judge-5, Satara in Misc. Civil Appeal No. 122 of 2015. By these orders, the Courts below rejected the application made by the petitioners, hereinafter referred to as plaintiffs restraining the defendants from carrying out construction in open

space admeasuring 34 feet 6 inches x 28 feet 1 inch in Gram Panchayat property (Milkat) No. 372/1 situate at Mauze Sangam Mahuli, Taluka & District Satara (for short 'suit property').

3. Mr.Barge submitted that plaintiffs have instituted Suit for perpetual injunction restraining the defendants from carrying out construction in the suit property. He submitted that plaintiffs and defendant No.1 are real brothers. In family arrangement, plaintiff No.1 was allotted house No. 395, plaintiff No.2 was allotted house No. 178, plaintiff No.3 was allotted house No. 372/2 and defendant No.1 was allowed house No. 372/1. He submitted that Maharashtra Village Panchayats Act ('Panchayats Act') and Maharashtra Regional and Town Planning Act, 1966 (for short 'Town Planning Act') are amended by Maharashtra Village Panchayats Act and Maharashtra Regional and Town Planning (Amendment) Act, 2014 (for short 'Amendment Act'). He submitted that Section 52 of the Panchayats Act was amended and sub-sections (1) & (2) were substituted. The substituted sub-section (2) provides that any permission under sub-section (1) or sub-section (1A), as the case may be, shall be granted by the panchayat, upon an application made for this purpose, **only after obtaining the prior approval of the Town Planning Officer of the State Government, posted at the Panchayat Samiti level or in case, no such officer has been posted at the Panchayat Samiti level, the Town Planning Officer at the Zilla Parishad level.**

4. Mr.Barge submitted that the Amendment Act is brought into force by the State Government. The defendants have started construction on the suit property after the commencement of the Amendment Act without obtaining permission from the Officer referred in amended sub-section (2) of Section 52 of the Panchayats Act. In other words, the commencement certificate dated 27/04/2015 issued by Gram Panchayat is not in accordance with amended sub-section (2) of Section 52 of the Panchayats Act. He, therefore submitted that construction carried out by the defendants is patently illegal and unauthorised. He further submitted that Gram Panchayat has issued stop work notice dated 16/06/2015 to defendant No.1. Despite that, defendant No.1 is carrying on construction which is even otherwise illegal. Lastly, he submitted that the Courts below rejected the application as the Courts below proceeded on the premise that house No. 372/1 was allotted to defendant No.1. However, the Courts below failed to appreciate the dispute pertains to open space admeasuring 34 feet 6 inches x 28 feet 1 inch which is between houses No. 372/1 and 372/2.

5. On the other hand, Mr.Bodke supported the impugned order. He submitted that the Courts below rejected the application made by the plaintiffs mainly on the ground that as of today, no partition is effected among the brothers. The plaintiffs ought to have instituted Suit for partition. Apart from that, he submitted that

Section 1 (2) of the Amendment Act lays down that amendment shall come into force on such date as the State Government may, by notification in the Official Gazette appoint and different dates may be appointed for different sections of the Amendment Act. He submitted that plaintiffs have not produced on record notification showing that provisions of amended sub-section(2) of Section 52 of the Panchayats Act are brought into force.

6. He further submitted that assuming for the sake of argument without conceding that amended sub-section (2) of Section 52 of the Panchayats Act is brought into force if plaintiffs are aggrieved by the commencement certificate issued on 27/04/2015, they have remedy of filing Appeal under amended sub-section (2B) of Section 52 of the Panchayats Act. The plaintiffs have not challenged the building permission granted to defendant No.1. He further submitted that after considering the material on record, the Courts below have rejected the injunction application. He has taken me through the impugned orders and in particular, paragraphs 27 & 28 of the District Court's judgment. He submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

7. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Courts below have rejected

the application. In particular, the learned District Judge observed in paragraph 27 that defendant No.1 is allowed to enjoy the suit property by Laxman Pujari, father of the plaintiffs and defendant No.1. The plaintiffs are having separate houses and they are enjoying these houses. The learned District Judge, prima facie, observed that there is no substance in the contention of the plaintiffs that the suit property is in the joint possession of the plaintiffs and defendants. In paragraph 28, the learned District Judge noted that plaintiff No.1 has demolished old house and constructed new RCC building. Likewise, plaintiffs No. 2 & 3 are also enjoying separate ancestral houses. However, they have not included these houses and brought Suit for partition. The plaintiffs have instituted Suit only in respect of the property allotted to defendant No.1 claiming to be the joint family property. The conduct of the plaintiffs is malafide. The Suit instituted only with a view to stopping construction of the defendants. The learned District Judge, therefore, recorded a finding that plaintiffs did not come to the Court with clean hands and therefore, they are not entitled to exercise discretionary order.

8. After considering the material on record, I do not find that the Courts below committed any error in rejecting the application.

9. Mr.Barge relied upon amended sub-section (2) of Section 52 of the Panchayats Act. However, he has not clarified when

amended sub-section (2) of Section 52 is brought into force. Even assuming that the said sub-section (2) of Section 52 is brought into force, no material is produced by the plaintiffs to show that they have availed remedy of appeal as per amended sub-section (2B) of Section 52. In view thereof, prima facie, at this stage, it cannot be said that building permission dated 27/04/2015 is contrary to the provisions of amended sub-section (2) of Section 52 of the Panchayats Act. 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.)