

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Letters Patent Appeal No. 12 of 2014 in Writ Petition No. 717 of 2012

Subhash s/o Santosh Charpe and others vs. Santosh s/o Pandurang
Charpe and another.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	<u>Court's or Judge's</u> <u>Orders.</u>
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Mr. Y.R.Sonkusare, Advocate for the
appellants.

CORAM: B.R.GAVAI &
MRS. MRIDULA R. BHATKAR,JJ
DATE : 6.1.2015

This appeal challenges the order passed by the learned Single Judge of this Court dated 13.2.2012, thereby rejecting the writ petition filed by the present appellants, challenging the concurrent orders passed by the learned trial court thereby allowing the application of the defendant for grant of injunction and of the appellate court thereby dismissing the appeal of the present appellants.

2. Mr. Sonkusare, learned counsel for the appellants, submits that the learned trial court on earlier occasion having

rejected the application of the respondents/ defendants and the same being upheld by the learned appellate Court as well as by the learned Single Judge of this Court, the second application itself was not tenable.

3. We have perused the orders passed in the first round of the litigation as well as in the second round. In the first round, the application was filed by the respondents/ defendants contending therein that the plaintiff was obstructing with their possession and as such an injunction was sought praying for an order of restraining the plaintiff from interfering with their possession. Relying on the very settled principle of law that a coparcener cannot seek injunction against another coparcener, the application came to be rejected and the same was upheld by the learned appellate court. A writ petition challenging the same, being Writ Petition no. 818 of 2011 came to be rejected by the learned Single judge of this Court.

4. However, the defendant no.1, contending that the plaintiff was obstructing the harvesting, filed another application praying for injunction restraining the plaintiff from interfering with his right as a Karta of the Hindu Undivided Family. The

said application is allowed and the appeal challenging there by filed by the present appellants was dismissed. The writ petition, challenging the said concurrent orders, has been dismissed by the order impugned herein.

5. Perusal of the record would reveal that even the plaintiff has not disputed that the defendant no.1 is a Karta of the family. The Apex Court in the case of Sunil Kumar and another vs. Ram Parkash and others, reported in AIR 1988 Supreme Court, 576 held that though the suit for permanent injunction by the coparcener against the Karta, for restraining him from alienating the house property, would not be maintainable, however, has distinguished the right of the Karta to manage the property belonging to the coparcenery. It has been further held that the Karta of the family has right to manage the properties of the Hindu Undivided Family in the interest of the family.

6. Perusal of the appellate order would reveal that the appellate court has modified the order passed by the learned trial court and directed that the interest of the present

appellants should also be protected. In that view of the matter, we find that no case is made out to interfere with the concurrent orders. The appeal is, therefore, rejected.

JUDGE

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