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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5450 OF 2016

Atmaram Jeevan Tribhuvan (Died) LRs

PETITIONERS

VERSUS

Sumitra Dinkar Tribhuvan & others

RESPONDENTS

.....
Mr. Amol Gandhi, Advocate for the petitioner

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 3rd AUGUST, 2016

ORDER :

1. Heard learned advocate for the petitioners.
2. The petitioners are before this court aggrieved by order dated 19th November, 2015 passed in Miscellaneous Civil Appeal No.52 of 2012 by District Judge-, Kopargaoon dismissing the same and confirming the order dated 14th September, 2012 passed by Civil Judge, Senior Division, Kopargapon on an application for temporary injunction pursuant to Order XXXIX, Rules 1 and 2 of the Civil Procedure Code in Special Civil Suit No.79 of 2010.
3. Mr. Amol Gandhi, learned advocate for the petitioners

contends that the suit has been filed claiming relief of declaration that mutation entry bearing No.6997 in favour of the petitioners effected way back in 1968 is not maintainable, having regard to section 158 of the Maharashtra Land Revenue Code. He further contends that the injunction and restraint placed on the petitioners not to deal with, alienate or create third party interest over the suit property places onerous condition on them and curtails freedom from enjoyment of their property. He submits that the restraint had been placed on them merely on request, without application disclosing any apprehension that the petitioners are likely to dispose of the property. In the circumstances, no injunction had been warranted against the petitioners. As such, the trial as well as appellate courts have committed grave error in granting injunction.

4. Perusal of the order passed by the trial court shows that the three necessary ingredients required for granting injunction, have been duly considered. It has been observed that merely upon revenue entries, it may not be considered that the property stands transferred in the name of the person whose name is shown in revenue the record. The trial court further considered that if restraint is not placed, grave prejudice is likely to be caused to the plaintiffs and that unless restraint is placed, in all

likelihood if an alienation takes place, it will not be conducive to the purpose of the suit and give rise to multiplicity of proceedings.

5. The appellate court has considered the matter more elaborately. The appellate court has considered that maintainability of the suit would be a matter to be decided on evidence. It has further considered as to whether revenue authorities while taking mutation entries had followed proper procedure and had made due inquiry or not and have been contended the same being illegal and null. Assertions in respect of the same appear to have been made in the plaint. The court has also referred to a decision relied upon on behalf of the plaintiffs and considered that *prima facie* it appears that at this stage, it cannot be considered that the suit is barred.

6. The court has also referred to section 158 of the Maharashtra Land Revenue Code and considered that having regard to legal position, if the order is *non est* and nullity and without jurisdiction then jurisdiction of the civil court is not barred and further that such an issue would be required to be decided upon evidence giving opportunity to the parties. The court has further referred to plaintiffs' case is that mutation

entry No.6997 sanctioned in the name of present petitioner is without jurisdiction.

7. The courts, in the circumstances, have found that the plaintiff has made out *prima facie* case, balance of convenience also lies in their favour and further that they would suffer irreparable loss. The orders are concurrent. The findings as are appearing cannot be said to be so perverse so as to require interference in the discretionary powers of this court.

8. As such, writ petition is not being entertained and is rejected. Aforesaid observations indeed are for the purpose of decision in writ petition and shall carry no influence for consideration of suit on merits.

9. Looking at that suit is pending since long, the same be proceeded with expeditiously.

[SUNIL P. DESHMUKH, J.]