

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4151 OF 2016

Yogeshkumar S/o Laxmanrao Deshpande,
Age : 41 yrs. Occ. Service,
R/o "Yogkunj", Deglur Road, Ram Nagar, Udgir
A.P. D-103, Bharti Vihar,
Behind Bharati Vidyapeeth,
Katraj, Pune

.. Petitioner

Vs.

Sunita Laxmanrao Deshpande,
Age 43 yrs, Occ. Service,
R/o Ramnagar, Deglur road,
Udgir, Dist. Latur

.. Respondent

Mr. A.B. Kadethankar, Advocate for the petitioner
Mrs. M.A. Kulkarni, Advocate for the respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 28-04-2016

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2. The petition has been moved purporting to challenge concurrent orders passed by two courts, one by the trial court, upon an application for temporary injunction filed by the respondent-plaintiff granting temporary injunction restraining the present petitioner-

defendant from causing interference in the possession of the plaintiff over the suit property and another by first appellate court in misc. civil appeal. Since the appeal has failed, the writ petition has been filed by petitioner-defendant.

3. According to the learned counsel for the petitioner, as a matter of fact, the status, as claimed by the plaintiff is dubious and as such, suit property cannot be said to have been given/inherited/granted or owned by the respondent and the alleged possession over the same cannot be said to be legitimate. Learned counsel for the petitioner submits that certain litigations at several stages before various authorities are going on between the parties.

4. Learned counsel Mrs. Kulkarni, appearing for the respondent contends that the property has been given to the respondent by her deceased husband long back and that it was she, who was looking after the old aged husband. Their marriage had taken place in 2007. During all the period, till his death, her deceased husband was being looked after by the present respondent. No other person including petitioner had turned to him and looked after while he was ailing and alive. It is being submitted by her that there is equitable distribution of the properties amongst the heirs left behind by her deceased husband. Learned counsel for the respondent further submits that the trial court as well as the appellate court have *prima*

facie found the respondent to be in possession of the property and have rightly passed the orders. These concurrent findings of facts are not amenable to be re-opened under Article 227 of the Constitution of India, since those being not perverse.

5. I find considerable force in the submissions being advanced on behalf of the respondent/plaintiff. The request made in the writ petition about setting aside the impugned order is not being considered. As such, the writ petition stands rejected.

6. Learned counsel for the petitioner further submits that it would suffice at this juncture if the property is not dealt with by the respondent/plaintiff.

7. Learned counsel for the respondent submits that the request now being made in the writ petition about dealing with the suit property, cannot be considered at this stage, neither the apprehension that is now being expressed, is supported by any material. If an occasion arises, such a request may be made by the petitioner before appropriate forum, which of course would be subject to be decided on merits. She further submits that there is nothing on record to show that the property is about to be dealt with. As such the request does not deserve consideration.

8. However, since apprehension has been expressed by the learned counsel for the petitioner, and that the petitioner is getting phone calls about the property being dealt with, in such a situation, he may make appropriate request before the appropriate forum.

9. The observations made hereinabove in this order are made for the purposes of rejection of the writ petition and would not have any influence on any other proceedings or in the suit. Rule stands discharged.

[SUNIL P. DESHMUKH]
JUDGE

arp/