

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

WRIT PETITION NO. 11027 OF 2015

1. Vishweshwar s/o Dagdu Vibhute
Age: 61 years, Occu. Agril,
R/o. Ghatangri, Ta. Osmanabad,
Dist. Osmanabad
2. Umakant s/o Dagdu Vibhute
Age: 56 years, occu. Agril.,
R/o. Ghatangri, Ta. Osmanabad,
Dist. Osmanabad
3. Bharat s/o Dagdu Vibhute,
Age: 51 years, occu. Agril,
R/o. Ghatangri, Ta. Osmanabad,
Dist. Osmanabad
4. Sanjay s/o Dagdu Vibhute
Age: 46 years, Occu. Agril,
R/o. Ghatangri, Ta. Osmanabad,
Dist. Osmanabad
5. Vishal s/o Vishweshwar Vibhute
Age: 28 years, Occu. Agril,
R/o. Ghatangri, Ta and Dist. Osmanabad
6. Sandip s/o Umakant Vibhute
Age: 26 years, Occu. Agril,
R/o. Ghatangri, Ta. and Dist. Osmanabad
7. Sagar s/o Umakant Vibhute,
Age: 23 years, Occu. Agril,
R/o. Ghatangri, Ta. Osmanabad,
Dist. Osmanabad

...PETITIONERS
(Orig. Defendants)

VERSUS

Gajendra s/o Girdhari Vibhute
Age: 62 years, Occu. Agril and Business,
R/o. Ghatangri, at present Tambari Vibhag,
Osmanabad, Ta and Dist. Osmanabad ...RESPONDENT
(Orig. Plaintiff)

.....
Mr. R. D. Biradar, Advocate for petitioners
Mr. U. R. Awate, h/f Mr. S.B. Talekar, Advocate for respondent
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 4th APRIL, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties.
2. Respondent has instituted proceeding bearing Regular Civil Suit No. 474 of 2014, before Civil Judge, Senior Division, Osmanabad, seeking injunction in respect of the property as stated in the plaint and in prayer clauses. Along with plaint, the respondent-plaintiff had filed application Exhibit-5 for temporary injunction, which came to be rejected by the trial court. However, in Miscellaneous Civil Appeal No.98 of 2014,

Principal District Judge, Osmanabad, allowed the same and granted injunction as prayed for in Exhibit-5.

3. It appears that some mutation entries bearing No. 333 and 334 dated 11th November, 1971 had been taken, which were produced by present petitioners-defendants, wherein, it is contended by petitioners that, in the family partition among his family members viz. him, brother and father, the suit land is not shown to have fallen to the share of plaintiff, whereas, it appears to the contention on behalf of plaintiff that after purchase of the suit land from father of defendants No. 1 to 4 by brother of plaintiff, there have been certain events, which have occurred and that a family partition had taken place in 1992 and accordingly suit land came to the share of the plaintiff and the plaintiff is possessing the suit land since then.

4. Perusal of the orders passed by the trial court on Exhibit-5 for temporary injunction and the order in Miscellaneous Civil Appeal No. 98 of 2014 shows that, prima-facie quite a few documents, depict, since 1971, the suit property is in possession of plaintiff's erstwhile family and the consolidation record also shows same and revenue record as

well as consolidation record, prima-facie shows the plaintiff to be in possession.

5. Learned counsel for petitioners Mr. Biradar contends that the plaintiff claims an area of 56 *Aar* as suit land whereas the sale-deed refers to only 50 *Aar*. *However, it* is a matter, which would be relevant for consideration during trial of the suit. At the stage of granting temporary injunction, such a contention in the face of record which has been considered by the appellate court, may not be of significance. It is for the parties to prove their respective cases. Having regard to the record which has been placed along with the temporary injunction application, the decision rendered by the appellate court is not liable to be interfered with and it cannot be said to be a perverse decision.

6. In view of that, I am not inclined to interfere with the order passed by appellate court.

7. Writ petition, as such, is not being entertained and stands dismissed. Rule is discharged.

8. Learned counsel Mr. Biradar requests that since the issues have been framed, the suit may be directed to be

disposed of expeditiously. There is no objection by the respondent-plaintiff for expeditious disposal of the suit.

9. Having regard to aforesaid, trial court may proceed with and decide the suit as expeditiously as possible preferably within a period of one year from the date of receipt of writ of this order.

(SUNIL P. DESHMUKH, J.)

sms