

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

WRIT PETITION NO. 6591 OF 2016

Subabai w/o Kashinath Kawde and others .. Petitioners

vs

Dagdu s/o Edknath and another .. Respondents

Mr. T. G. Gaikwad, Advocate for petitioners

CORAM : SUNIL P. DESHMUKH, J.
DATE : 27th June, 2016

ORDER :

1. Heard learned counsel for the petitioners.
2. Aggrieved by order dated 02-03-2016 passed by District Judge-4, Ambajogai, dismissing miscellaneous civil appeal no. 13 of 2014 at the behest of present petitioners-original defendants, challenging interlocutory order passed by Civil Judge, Junior Division, Kaij, on 07-02-2014 granting Exhibit-5 in regular civil suit no. 167 of 2013 filed by present respondents-original plaintiff, original defendants are before this court.
3. Mr. Gaikwad strenuously urges to give indulgence to the petitioners-original defendants since, according to him, predecessor of the petitioners happened to be protected tenant and record also

depicts the same. He submits that after death of defendants' predecessor, under mutation entry no.2027 their names have come on record. Having regard to this, according to learned counsel trial as well as appellate court have committed error in clamping injunction against petitioners-defendants who are legitimate holders of right to the property.

4. Perusal of impugned order shows that regular civil suit no.167 of 2013 simplicitor for injunction in respect of the property particularly described in the same admeasuring about 6 acre, 6 guntha, had been filed. The courts have taken stock of the situation and the material available in respect of the same and the appellate court considered giving reasons relevantly observes in paragraph no. 11 which impelled it to refrain from interfering with the order passed by trial court. Said observations read as under:

“ 11. Thus the trial court after considering the revenue record showing long standing possession of the plaintiffs over suit land ruled that they have proved prima – facie case, balance of convenience lies in their favour and if injunction is refused, then irreparable injury will be caused to them. Findings recorded by the trial court in the light of material before him appears to be quite proper, legal & based upon due appreciation of evidence. Subsequent judicial pronouncement of revenue court recognizes the tenancy rights of the plaintiffs over suit property. Considering this change in circumstance coupled with revenue record showing long standing possession of the plaintiffs over suit property impugned order needs no interference.”

5. Having regard to aforesaid, prima facie, it appears that respondents have been able to show that they have been in

possession of the property involved in suit. Having regard to concurrent findings it does not appear to be a case, for the reasons as have been submitted by petitioners, that those are sufficient at this stage to interfere with the findings.

6. In view of aforesaid, I am not inclined to entertain with writ petition.

7. Writ petition as such stands rejected, making it clear that observations appearing hitherto in this order as well as those in the decisions on interlocutory application Exhibit-5 and miscellaneous civil appeal are *prima facie*. The trial court will have to decide *lis* between the parties on the basis of facts, circumstance, law and evidence on record without being influenced by aforesaid observations. Since, suit is for injunction it would be appropriate if trial court proceeds to decide the same expeditiously, preferably within a period of one year from the date of receipt of writ of this order.

SUNIL P. DESHMUKH,
JUDGE

pnd