

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7072 OF 2015

KISHANRAO BAPURAO CHAVAN AND OTHERS
VERSUS
SARTHAK MANOJ CHAVAN AND OTHERS

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Advocate for Petitioners : Mr. Gastgar Santosh B.
Advocate for Respondents 1 and 2: Mr. S.V. Mundhe

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CORAM : V. K. JADHAV, J.
DATED : 21st JANUARY, 2016

PER COURT:-

1. By consent of parties, heard finally.
2. The petitioners are original defendant Nos. 1 and 3 to 6. The respondent Nos. 1 and 2 instituted a suit for perpetual injunction in respect of suit land Gat No. 423 admeasuring 2 H 41 R, situated in two different pieces, as shown in para 2 of the plaint. In the pending suit, the respondents-plaintiffs have also applied for issuance of order of temporary injunction vide application Exh.5. The petitioners-defendants have strongly resisted the claim of the plaintiffs by filing their written statement. They have denied the title and possession of the respondents-plaintiffs over the suit land. The learned Judge of the trial court has rejected the application Exh.5 after giving opportunity of hearing to both sides. Being aggrieved by the same, respondents-plaintiffs have preferred an appeal in the District Court. The learned

District Judge-1, Nilanga by impugned order dated 19.6.2015 allowed the appeal and thereby set aside the order passed by the trial court below Exh.5 and allowed the said application filed for temporary injunction and thereby restrained the present petitioners-defendants from causing obstruction in the plaintiffs' possession over the suit property Gat No. 423 admeasuring 2 H 41 R situated at village Gaur, Tq. Nilanga, till disposal of suit.

3. Learned counsel for the petitioners-defendants submits that there were five ancestors viz. Nivrutti, Vyankat, Ramchandra, Madhav and Kishan. Respondents-plaintiffs are from the branch of Nivrutti. Learned counsel further submits that there is no evidence to show that the partition came to be effected among these five brothers and suit land was allotted to the share of respondents-plaintiffs. Learned counsel further submits that on the other hand, there is registered partition deed among the defendants whereby the suit land is allotted to the share of petitioner-defendant No.4 Arvind Kishan Chavan and since then he is in lawful possession of suit land. Learned counsel further submits that the respondents-plaintiffs, by showing four boundaries of the land of petitioner-defendant No.4, claiming their possession over the suit land. Learned counsel submits that learned District Judge has not considered this factual aspect and erroneously allowed the appeal by setting aside the order passed by the trial court.

4. Learned counsel for the respondents-plaintiffs submits that the partition deed and the revenue record unmistakably point out that the suit land is allotted to the plaintiffs by way for partition. Learned counsel further submits that the learned C.J.J.D. has ignored the evidence on record and erroneously rejected the application at Exh.5. Learned counsel further submits that learned District Judge has rightly allowed the appeal by setting aside the order passed by the trial court below Exh.5 and granted temporary injunction in favour of the respondents-plaintiffs.

5. On careful perusal of pleadings and the documents submitted alongwith the pleadings, it appears that as per the memorandum of partition dated 27.9.2012, the partition came to be effected between Madhav Bapurao Chavan so also the wife and children of Vyankatrao Chavan and the respondents-plaintiffs. It also appears from the said memorandum of partition that the land admeasuring 2 H 41 R out of Gat No. 423 came to be allotted to the share of respondents-plaintiffs. The mutation entry No. 1677 also came to be sanctioned on the basis of said memorandum of partition. The petitioners-defendants are claiming their title and possession over the suit land by way of another partition dated 30.7.2012. It appears from the said partition deed that the partition can be effected between one of the five ancestors i.e. Kishanrao Chavan and his two sons. Learned District Judge has rightly observed that at one stage the petitioners-defendants are challenging

respondents-plaintiffs' theory with contention that there was no partition amongst five ancestors, however, at the same time, the petitioners-defendants are claiming their title and possession over the suit land by way of partition dated 30.7.2012. The partition dated 30.7.2012 is not possible without the partition effected among five ancestors previously. The petitioners-defendants since are claiming partition between one ancestor Kishan and his children, it indicates that the partition is effected between original five ancestors.

6. In the light of above discussion, I do not find any substance in the writ petition. The learned District Judge has rightly allowed the appeal by setting aside the order below Exh.5 passed by the trial Court. The District Judge has rightly allowed the application Exh.5 for temporary injunction and thereby restrained the petitioners-defendants from causing obstructions in the possession of respondents-plaintiffs' over the suit land till disposal of the suit.

7. In view of the above, writ petition is devoid of any merits and therefore, the same is dismissed. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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