

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

WRIT PETITION NO. 8411 OF 2016

Sambhaji s/o Satwaji Bhosle and another .. Petitioners

versus

Kishan s/o Bhujanga Bhosle .. Respondent

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Mr. Shailendra S. Gangakhedkar, Advocate for petitioners

CORAM : SUNIL P. DESHMUKH, J.

DATE : 8th August, 2016

ORDER :

1. Petitioners – original appellants (judgment debtors) are before this court against order dated 28-07-2016 on application for interim relief at Exhibit 5 in the proceedings bearing regular civil appeal no. 50 of 2016, passed by District Judge-1, Nanded.

2. Regular civil appeal No 50 of 2016 has arisen from dismissal of the objection petition filed by present petitioners in regular darkhast no. 7 of 2014.

3. Learned counsel for the petitioners contends that a decree had been passed in regular civil suit no. 94 of 1963 wherein half of survey no. 54 along with additional portion of 6 feet in width on eastern side and triangular shape area on northern side had been decreed in favour of the plaintiffs in said suit, namely, Jalbaji and

Satwaji. Petitioners claim said area being ancestral, they are entitled to the same and claim to be in possession of it from erstwhile survey no. 54. Learned counsel submits that said area now comprises gut no. 90, and another half of the area of survey no. 54 comprises gut No.91.

4. Learned counsel further contends that the petitioners are in possession of said area as referred to in the decree in respect of Gut No. 90. Around 2001, respondents purportedly got measured their gut no. 91 through taluka inspector of land records and instituted suit bearing regular civil suit no. 543 of 2001 against defendants – present petitioners Sambhaji Bhosle and Baliram Bhosle, claiming that they had encroached over an area of 18 aar from gut no. 91 and as such sought recovery of said portion from them. Regular civil suit no. 543 of 2001 was decreed on 13-08-2014 by trial court, regular civil appeal no. 116 of 2004 at petitioners' instance against said decree failed on 04-02-2012, and second appeal before this court bearing no. 426 of 2012 before this court had also been dismissed on 11-07-2013, observing specifically that decree in regular civil suit no. 94 of 1963 had not been violated while decree in regular civil suit no. 543 of of 2001 had been passed.

5. It appears that the judgment debtors i.e. Sambhaji and Baliram had been before the Supreme Court under petition for

special leave to appeal, but the same had also been dismissed, holding that there is no legal and valid ground for interference.

6. Presumably, thereafter present petitioners entered their appearance in the regular darkhast No. 7 of 2014 referred to above and their objections had been considered and had been dismissed on 28-04-2016 which led to regular civil appeal no. 50 of 2016 at their instance along with application Exhibit-5 for interim relief.

7. The appellate court has rejected Exhibit-5 by an elaborate order passed on 28-07-2016, particularly referring to that while regular civil suit no. 543 of 2001 was being tried, defendants' contention relating to decree in regular civil suit no. 94 of 1963 had been duly considered. It is this order of the appellate court which is challenged in present writ petition.

8. Having regard to aforesaid factual background, it appears that the contentions which were being addressed in the civil proceedings while regular civil suit no. 543 of 2001 had been proceeded with are being re-agitated under the garb of objections at the instance of present petitioners.

9. On the whole, it appears that petitioners are seeking re-trial upon the submissions which stand decided in the civil proceedings hitherto.

10. In view of aforesaid and especially having regard to the elaborate consideration which has been given by the appellate court while deciding Exhibit – 5 in regular civil appeal no. 50 of 2016, there does not appear to be any case requiring exercise of discretionary powers in favour of the petitioners. The facts as have been referred to and narrated in impugned order overwhelmingly show that such an approach may turn out to be meddlesome.

11. Writ petition has no substance and as such, stands rejected.

SUNIL P. DESHMUKH,  
JUDGE

pnd