

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

WRIT PETITION NO.11352/2015

Haji Ayyas Baig Anwar Mirza

- PETITIONER

VERSUS

Kamlakar Dashrath Wani (Shirude)
and others

- RESPONDENTS

Mr.NL Choudhari, Advocate for petitioner;
Mr.KC Sant, Advocate for Respondent No.1;
Mr.SN Rodge, Adv.h/for Mr. SS Suvarna, Adv.for Resp.2;
Mr.AR Syed, Adv.h/for Mr.SP Brahme, Adv. For Resp.3.

CORAM : S.S.SHINDE, J.

DATE : 1st February, 2016.

ORAL ORDER:

1) Heard. Rule. Rule returnable forthwith.

This petition takes exception to judgment and order dated 14th July, 2015 passed by learned District Judge-5, Dhule in Misc. Civil Appeal No.64/2014. The present Respondent No.1 is original plaintiff and the present petitioner is original defendant No.4 in Special Civil Suit No.72/2013 pending on the file of Civil Judge, Senior Division, Dhule. Respondent No.1 herein filed the said suit. In the said suit, an application below Exhibit-5 was filed by the

plaintiff. The said application seeking injunction against the petitioner/orig.deft.No.4, came to be rejected by the trial court. Aggrieved by the said order, Respondent No.1 filed an appeal being Misc. Civil Appeal No.64/2014. By the impugned order, the appellate court allowed the appeal and set aside the order passed below Exhibit-5 in Special Civil Suit No.72/2013 and original deft.no.4, i.e. present petitioner is restrained from enforcing his possession over the western half portion of the suit property as described in plaint para 1 till disposal of the suit. Hence, this petition.

2) Learned Counsel appearing for the petitioner submits that the property, in question, is purchased by the petitioner from original deft.no.1 and in pursuant to execution of the sale-deed the petitioner is put in possession of the suit property. He invited attention of this court to recitals of the sale-deed and also the written-statement filed by original deft.no.1 and submits that the original deft.no.1, who executed the sale-deed in favour of the petitioner has stated in his written statement that after execution of the sale-deed, the petitioner

is put in possession of the suit property. He further submits that since then the petitioner is in possession of the said property. He further invited attention of this Court to the reasons assigned by the trial court while rejecting the application at Exhibit-5 and submits that since the petitioner was put in possession of the suit property in the year 2011, his possession over the said property needs to be protected, else it will cause irreparable loss to the interest of the petitioner.

3) On the other hand, learned counsel for the original plaintiff, i.e. Respondent No.1 herein, relying upon the reasons assigned by the Appellate court, submits that since the property, which is the subject matter of the suit, is joint family property, the original deft.no.1 ought not to have sold the suit property. He further submits that, even if recitals of such alleged sale-deed are considered, there was no question of handing over the possession of the suit property to the petitioner, which is joint family property and unless there is partition and demarcation of shares, the petitioner cannot claim that, the particular portion of the property

was possession of the deft.no.1. In absence of such partition, he submits that, the Appellate court has rightly held that, the plaintiff is entitled for relief as prayed in the appeal and accordingly relief is granted, therefore, this court may not upset the finding of fact arrived at by the Appellate court. Therefore, he submits that the petition may be rejected.

4) I have heard the learned counsel for the petitioner, learned Counsel for Respondent No.1 and learned Counsel for Respondent Nos. 2 to 4. With their able assistance, perused the petition, annexures thereto, order passed by the trial court as well as Appellate court, the reasons assigned by the trial court and Appellate court, the documents placed on record, including the written-statement filed by the parties.

5) It appears that the Trial Court has rejected the application at Exhibit-5 filed by the original plaintiff and thereafter the Appellate Court, in the month of July 2015 allowed the Misc. Civil Appeal filed by the plaintiff. Upon considering the

material placed on record, it appears from the written statement filed by Respondent No.1/deft.no.1 that, he has stated in the said written-statement that, possession of the said property was handed over to the petitioner. The learned Counsel appearing for the original plaintiff is right in his submission that, in absence of any demarcation of the share in the property in question, merely because it is mentioned in the recitals of the sale-deed that, the possession is handed over, petitioner cannot claim that, he is put in possession of the suit property. In my opinion, instead of considering the controversy at greater length on merits of the matter, since the suit is pending before the concerned Court, awaiting its disposal, in the peculiar facts and circumstances of the case, ends of justice would be met, if the parties are directed to maintain status quo as to the possession of the suit property, as on today till disposal of the suit, and if the trial court is directed to dispose of the suit within a period of three months from today. In the light of above, following order,

ORDER

- i) The parties are directed to maintain status

quo as to the possession of the suit property, as of today till disposal of the suit;

ii) The learned Civil Judge, Senior Division, Dhule is directed to hear Special Civil Suit No. 72/2013, if necessary on day-to-day basis, and decide the same, as expeditiously as possible and preferably within a period of three months from receipt of the order passed by this Court;

iii) The impugned order in this petition, i.e. order dated 14th July, 2015 passed by learned District Judge-5, Dhule in Misc. Civil Appeal No.64/2014 stands substituted by the order passed by this Court today;

iv) The Writ Petition is disposed of. Rule is accordingly made absolute in aforesaid terms.

. Parties to act on authenticated copy of this order.

(S.S.SHINDE)
JUDGE

bdv/