

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 2884 OF 2016

Smt. Rajani Madhukar Rankhambe
And Ors.

...Petitioners

Versus

Sou. Muktabai Ramchandra Pund
And Ors.

...Respondents

....

Mr. Sugandh B. Deshmukh, Advocate for the Petitioners.
Mr. Girish R. Agrawal, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 21st APRIL, 2016

P.C.

1. Heard Mr. Sugandh Deshmukh, learned Counsel for the petitioners and Mr. Girish Agrawal, learned Counsel for respondent No.1, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 21.1.2016 passed by learned District Judge-2, Niphad in Misc. Civil Appeal No.120/2015. By that order, learned District Judge allowed the appeal preferred by respondent No.1, hereinafter referred to as 'plaintiff', and quashed and set aside the judgment and order dated 14.12.2015 passed by learned Civil Judge, Junior Division, Niphad below Exhibit-5 in R.C.S.

No.186/2015. Learned District Judge allowed the application Exhibit-5 filed by the plaintiff and issued injunction restraining the petitioners, hereinafter referred to as the 'defendants' from taking possession of the land admeasuring 0.99 Ares from the plaintiff on the basis of the order passed in Encroachment Case No.11/2011 dated 11.3.2013 by Sub-Divisional Officer, Niphad or order passed in revision arising therefrom till decision of Regular Civil Suit No.186/2015.

3. In support of this petition, Mr. Deshmukh strenuously contended that the plaintiff has not made out a *prima facie* case. He submitted that in the first place, the plaintiff ought to have instituted the suit within one year from the order dated 10.6.2013 passed by the Additional Collector, Nashik. Hence, the suit is barred by limitation. Secondly, the plaintiff has prayed for declaration of his ownership and in the alternative for declaration of ownership by adverse possession. The plaintiff cannot take inconsistent stand. In any case, declaration of ownership by adverse possession cannot be claimed by the plaintiff. He relied upon the decision of the Apex Court in the case of **Gurdwara Sahib Vs Gram Panchayat Village**

Sirthala, (2014) 1 Supreme Court Cases 669 as also decision of this Court (Coram: R.M. Savant,J.) dated 9.9.2015 in the case of **Sonabai Jagannath Avhad & Ors. vs. Shivaji Ananda Avhad** in Writ Petition [St.] No.24727/2015 and in particular paragraph-8 thereof. He invited my attention to paragraph-9 of the plaint and submitted that the plaintiff ought to have instituted the suit within one year from the order passed by the Additional Collector on 10.6.2013. He also invited my attention to order dated 11.3.2013 passed by the Sub-Divisional Officer, Niphad to contend that if at all the plaintiff was aggrieved by the measurement carried out by the Taluka Inspector of Land Records, she should have approached the higher authority by filing an appeal. He submitted that as the plaintiff has not made out *prima facie* case as also balance of convenience does not lie in her favour, the appellate Court was not justified in interfering with the discretionary order passed by learned trial Court.

4. On the other hand, Mr. Agrawal supported the impugned order. He submitted that the plaintiff has instituted the suit for the purpose of declaration of title on the strength of

two sale deeds and in alternative the plaintiff has sought declaration of ownership by way of adverse possession. In the case of **Sonabai Avhad** (supra), the learned Single Judge has referred to the prayers made by the plaintiff in paragraph-4. In that case the plaintiff had sought declaration that the defendant is not entitled to possession on the basis of the illegal order passed by Sub-Divisional Officer. The trial Court observed that the plaintiff did not place any material on record to show that she had title to the disputed property. The trial Court further held that injunction cannot be granted against the true owner.

5. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record.

6. Insofar as the contention advanced by Mr. Deshmukh that the suit is barred by limitation and he ought to have instituted the suit within a period of one year from 10.6.2013 is concerned, for the reasons recorded in the order dated 21.4.2016 passed in Writ Petition No.1757/2015, I do not find any merit in this submission. In fact, perusal of paragraph-9 of the plaint shows that the plaintiff has instituted suit immediately upon

receipt of the notice dated 30.10.2015. *Prima facie* it cannot be said that the suit is barred by limitation. It is also not in dispute that the plaintiff is in possession of the suit property. Learned District Judge held that the plaintiff has instituted the suit for agitating title within one year from the date of finality of the order passed by Minister for Revenue dated 30.9.2015. In paragraph-20, learned District Judge recorded that if the application for interim relief is rejected and the plaintiff loses possession, the entire suit will become infructuous. Learned District Judge, therefore, held that the plaintiff has made out *prima facie* case, the balance of convenience lies in her favour and that irreparable loss would be caused to the plaintiff in case the injunction is refused. In view thereof, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, the petition fails and the same is dismissed. Liberty is reserved with the parties to apply for expeditious disposal of the suit. If such an application is made, learned trial Judge will pass appropriate order on that application. Order accordingly.

(R. G. KETKAR, J.)