

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 739 OF 2015

Suryakant Jagannath Lonkar & Ors.

.....Appellants

V/s.

Smt. Shantabai Vamanrao Sable

....Respondent

* * * * *

Mr. S.V. Sadavarte, Advocate for the appellants.

Mr. Pradeep J. Thorat, Advocate for respondents no.1 and 2.

Mr. Drupad S. Patil, Advocate for respondents no.3 to 10.

Mr. P.J. Pawar, Advocate for respondent no.24.

Coram :- Smt. R.P. SondurBaldota, J.**16th March, 2016.****P.C. :-**

1). This appeal preferred by the original plaintiffs challenges the order dated 18th April, 2015 passed by the trial Court dismissing their application for temporary injunction. The temporary injunction sought was to restrain and refrain the contesting defendants i.e. respondents no.1, 2 and 24 from creating third party rights over the suit property and disturbing their possession of it.

2). The present litigation has a long history which dates from the year 1911. One Maruti, the great grandfather of the appellants herein filed Regular Civil Suit No. 92 of 1911 for partition of the joint family

property between himself and four brothers i.e. Ganpatrao, Shripati, Bhairoba and Rambhau. Out of that, Rambhau was survived by only 4 daughters and Ganpat was survived by wife and a daughter. By the order dated 19th December, 1921 preliminary decree of partition was passed in the suit. When the same was put for execution, the parties arrived at settlement and compromise final decree dated 27th February, 1935 came to be passed by which the properties were divided between the three family members i.e. Shripati, Bairoba and Maruti. As regards the female members, two of the properties, which are subject matter of the present suit i.e. Special Civil Suit No. 1 of 2015, were earmarked for providing maintenance to them. The properties were to be cultivated by Yashwant, son of Maruti for the purpose.

3). In the year 1964, Daulat, another son of Maruti, filed Regular Civil Suit No. 21 of 1964 for partition of the properties that had fallen to the share of Maruti. In that suit, in view of death of the widow and daughter of Ganpat and one of the daughters of Rambhau he had staked a claim to a share in the property earmarked for maintenance. That suit was partly decreed by the order dated 31st August, 1967 and claim of Daulat and other sons of Maruti in respect of the properties earmarked for maintenance was rejected. The order was carried to the District Court by way of First Appeal and then to this Court by way of Second Appeal. However, decision as regards the two properties in

question was maintained. Thereafter, in the year 1987, after amendments to the Hindu Succession Act, the daughters of Rambhau filed Regular Civil Suit No. 943 of 1987 and Regular Civil Suit No. 1141 of 1987 against Yashwant for accounts and for possession of their share in the two properties contending that in view of the amendments to the Hindu Succession Act, their limited right to the two properties was converted into full right. The two suits were decreed and the decree in the suit is sustained throughout and also Apex Court by its order dated 21st October, 2013. Yeshwant, had thereafter unsuccessfully sought review of the order of the Apex Court and also filed curative petition. Thereafter, the daughters of Rambhau initiated execution proceeding which are pending. Respondent no.1 herein, is one of the daughters and respondent no.2 is the heir of another daughter. The appellants herein, alongwith the heirs of Yeshwant have been raising different objections to the execution by filing several proceedings.

4). The appellants, filed the present suit i.e. Special Civil Suit No. 1 of 2015 for a declaration that the sale-deed executed by respondents no.1, 2 with respondents no.16 to 24 of their share in the properties is not binding upon them and for cancellation of the same. The appellants also sought injunction to restrain respondents no.1, 2 and 24 from creating any third party rights over the suit properties and from handing over its possession. They filed the application at Exhibit- 5 for

interim reliefs. The trial Court dismissed the application by taking note of the history of the proceedings with a finding that the appellants have no *locus-standi* or any right, title or interest in the suit properties. The appellants were also not admittedly in possession of the suit properties. It is stated in the plaint that, the suit properties are in possession of original defendants no.3 to 10 who are the legal heirs of Yeshwant.

5). In view of the compromise decree passed in Regular Civil Suit No.92 of 1911, decree in Regular Civil Suit No. 21 of 1964, decree in Regular Civil Suit No. 943 of 1987 and decree in Regular Civil Suit No. 1141 of 1987, it is more than obvious that the plaintiffs have no right whatsoever to the properties in question. Besides, as has been admitted in the plaint itself, the plaintiffs are not in possession of the suit properties and the same are in possession of the heirs of Yeshwant. In that circumstance, the observation of the trial Court that the appellants have miserably failed to establish prima-facie case, is fully justified. It is also obvious that, the suit filed by the appellants is solely to frustrate the decree in Regular Civil Suit No. 943 of 1987 and Regular Civil Suit No. 1141 of 1987. Therefore, the Appeal from Order is dismissed with costs. The appellants shall pay costs quantified at Rs.50,000/- (Rs. Fifty Thousand only) to respondent no.1, respondent no.2 and respondent no. 24.

(SMT. R.P. SONDURBALDOTA, J)