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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10552 OF 2015

Rahul Kondiba Bengale and others .. Petitioners

Vs.

Sharad Balkrushna Deshpande and another .. Respondents

Mr.Yashodeep Deshmukh i/b Ms.Sharayu Shinde, Advocate for the
Petitioners.

Mr.Sarang S.Aradhya, Advocate for Respondents.

CORAM : R.G.KETKAR, J.
DATED : 23rd FEBRUARY, 2016

P.C. :

. Heard Mr.Yashodeep Deshmukh, learned Counsel for the
petitioners and Mr.Sarang Aradhya, learned Counsel for the
respondents at length.

2. By this Petition under Article 227 of the Constitution of
India, petitioners have challenged the judgment and order dated
28/08/2014 passed by the learned Civil Judge, Junior Division,
Taluka – Bhore, Dist. Pune below Exhibit 5 in Regular Civil Suit No. 94
of 2014 as also the judgment and order dated 05/08/2015 passed by
the learned District Judge – 19, Pune in Misc. Civil Appeal No. 45 of
2015. By these orders, the Courts below allowed the application
Exhibit 5 made by respondents, hereinafter referred to as plaintiffs
and issued injunction restraining the petitioners, hereinafter referred

to as defendants, from obstructing the peaceful possession of the plaintiffs over the suit property in any manner till the decision of the Suit.

3. Mr.Deshmukh submitted that the Courts below committed serious error in holding that the plaintiffs are in possession of the suit property. He further submitted that during the pendency of the Appeal, defendants took out application for injunction restraining the plaintiffs from creating third party interest. He submitted that while dismissing the Appeal, the learned District Judge has not considered the application made by the defendants for injunction restraining the plaintiffs from creating third party interest.

4. On the other hand, Mr.Aradhya supported the impugned orders. He submitted that after considering the material on record, the Courts below found that plaintiffs are in possession of the suit property right from the year 1973-74. As against this, defendants have not established that they are in possession. The Courts below were, therefore, justified in holding that prima facie, plaintiffs have made out a case for grant of injunction; that balance of convenience lies in favour of plaintiffs and that irreparable loss and hardship will be caused to the plaintiffs in case injunction is not granted.

5. Upon taking instructions, Mr.Aradhya states that during the pendency of the Suit, the plaintiffs will not create third party interest. Statement made by Mr.Aradhya on instructions is recorded.

6. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. A short question is whether the plaintiffs have established their possession over the suit property. The learned trial Judge has considered this aspect in paragraphs 10 and 13 and found that plaintiffs are in possession of the suit property. As far as the Appellate Court is concerned, in paragraph 10, the Appellate Court recorded that 7/12 extract of the suit property right from the year 1973-74 shows the name of respondents as owners and the property is in their possession. The mutation entry No. 1352 dated 20/09/2001 shows that plaintiffs have purchased the suit property by a registered sale deed for a consideration of Rs.3,50,000/- from Vilas Kondhalkar and Babasaheb Jagtap and that Shivaji Ramchandra Bathe is the consenting party for the same. Thus, long standing revenue entries clearly indicate prima facie ownership as well as possession of the plaintiffs over the suit property.

7. As far as the application taken out by the defendants for issuing injunction restraining the plaintiffs from creating third party interest is concerned, in paragraph 11, the learned District Judge noted that nothing was placed on record to indicate that plaintiffs are creating third party interest over the suit property and therefore, question of passing any order to that effect does not arise.

8. In view thereof, I do not find that the Courts below have

committed any error as far as issuing injunction restraining the defendants from obstructing their possession is concerned. As far as injunction restraining the plaintiffs from creating third party interest is concerned, in view of the statement made by Mr.Aradhya, no case is made out for examining this aspect as well. Subject to this, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)