

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 13452 OF 2016

Dyneshwar Nivrutti Dhone
And Ors.

...Petitioners

Versus

Prabhakar Krishnaji Khutale
And Ors.

...Respondents

....

Mr.A.A. Kumbhakoni, Senior Advocate a/w. Nikhil Wadikar,
Advocate for the Petitioners

Mr.V.S. Talkute, Advodate for Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 16th DECEMBER, 2016

P.C.

1. Heard Mr. A.A. Kumbhakoni, learned Senior Counsel for the petitioners and Mr. V.S. Talkute, learned Counsel for the respondents, at length.

2. Rule. Mr. Talkute waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of

India, the petitioners, hereinafter referred to as the 'plaintiffs', have challenged the judgment and order dated 21.10.2016 passed by the learned District Judge-3, Satara in Misc. Civil Appeal No.65/2016. By that order, the learned District Judge allowed the appeal preferred by the respondents, hereinafter referred to as the 'defendants', and quashed and set aside the judgment and order dated 30.3.2016 passed by the learned 7th Jt. Civil Judge, Junior Division, Satara below Exhibit-5 in R.C.S. No.38/2016. The learned District Judge vacated the injunction issued in favour of the plaintiffs.

4. By order dated 30.3.2016, the learned trial Judge issued injunction restraining the defendants from causing obstruction to the plaintiffs business of country liquor shop carried by them in the suit property as also restrained the defendants from dispossessing the plaintiffs from the suit property without following due process of law.

5. Mr. Talkute states that Satyajeet Dinkar Khutale, son of respondent No.2 is present in the Court. He has tendered photo copy of his Aadhaar Card, which is taken on record and marked 'X' for identification. Mr. Talkute, upon taking

instructions from him, states that the order passed by the learned District Judge may be set aside and the injunction order be modified to the extent of suit property admeasuring 324 sq. ft. He further states that without following due process of law, the defendants will not cause obstructions to the plaintiffs for carrying on business of country liquor in respect of 324 sq. ft. as also will not dispossess the plaintiffs in respect of 324 sq. ft. without following due process of law.

6. Mr. Talkute further submits that it may be clarified that the proceedings before the licensing authorities, namely, Municipal Authorities, Excise Authorities, Revenue Authorities may be ordered to be disposed of in accordance with law uninfluenced by the orders passed by Civil Court.

7. Mr. Kumbhakoni, upon taking telephonic instructions from petitioner No.1, states that the petitioners are agreeable for adopting this course. Hence, by consent of parties, petition is disposed of in following terms:

[1] Impugned order dated 21.10.2016 passed by the learned District Judge in Misc. Civil Appeal No.65/2016 is set aside.

[II] Order dated 30.3.2016 passed by the learned trial Judge below Exhibit-5 is modified as under :

- (i) The defendants are restrained from causing obstruction to the plaintiffs business of country liquor to the extent of 324 sq. ft. of City Survey No.176A/1A/1G in all admeasuring 2270.7 square meters, without following due process of law.
- (ii) The defendants are further restrained from dispossessing the plaintiffs from 324 sq. ft. of City Survey No.176A/1A/1G in all admeasuring 2270.7 square meters, without following due process of law.
- (iii) Injunction application Exhibit-5 stands partly allowed in aforesaid terms.

[III] The learned trial Judge will decide the suit on the basis of evidence on record and on its own merits in accordance with law uninfluenced by the observations made herein.

[IV] The licensing authorities, namely, Municipal Authorities, Excise Authorities, Revenue Authorities shall decide the proceedings in accordance with law uninfluenced by the orders passed by Civil Court.

[V] Rule is made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)