

IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.99 OF 2015

Parubai Vithoba Karmare and others                      ...      Petitioners  
Vs.  
Namdev Vithoba Karmare and others                      ...      Respondents

Mr. Prabhanjan B. Gujar for Petitioners.  
Ms Savita A. Prabhune for Respondents No.1 to 3 and 5.

**CORAM : R. G. KETKAR, J.**  
**DATE : APRIL 15, 2016**

**P.C. :**

Not on Board. At the request of the learned Counsel appearing for the parties, taken up for admission.

2. Heard Mr. Gujar, learned Counsel for petitioners and Ms Prabhune, learned Counsel for respondents No.1 to 3 and 5.

3. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 09.09.2014 passed by the learned Civil Judge, Senior Division, Vaduj below exhibit-86 in Special Civil Suit No.9 of 2013. By that order, the learned trial Judge rejected the application moved by original defendant No.2 for staying further proceedings of the Suit.

4. It is not in dispute that that respondent No.1 has instituted - (i) Regular Civil Suit No.257 of 2011; (ii) Regular Civil Suit No.27 of 2012 and (iii) the present Suit namely Special Civil Suit No.9 of 2013. It is also not in dispute that in Regular Civil Suit No.257 of 2011, respondent No.1-plaintiff took out application exhibit-5 against the defendants therein restraining the defendants from creating third party interest. By

judgment and order dated 27.09.2012, the learned trial Judge partly allowed the application exhibit-5 and issued injunction restraining the defendant No.1 from creating third party interest in respect of the properties described in paragraphs 1(2), 1(3), 1(4) and 1(9). Aggrieved by this decision, defendant No.1 has preferred Miscellaneous Civil Appeal No.31 of 2012 and the same is pending before the learned District Judge - Vaduj.

5. Upon taking instructions, Ms Prabhune states that respondent No.1 will withdraw Regular Civil Suit No.257 of 2011 as also Regular Civil Suit No.27 of 2012 and will prosecute only Special Civil Suit No.9 of 2013. Statement made by Ms Prabhune, on instructions, is recorded. Ms Prabhune further submits that order dated 27.09.2012 passed by the learned trial Judge below exhibit-5 in Regular Civil Suit No.257 of 2011 may be continued as interim order during the pendency of Special Civil Suit No.9 of 2013.

6. Upon taking instructions, Mr. Gujar submits that he has no objection for continuing the order dated 27.09.2012 passed by the learned trial Judge in Regular Civil Suit No.257 of 2011 as interim order in Special Civil Suit No.9 of 2013. He further states that petitioners will file application before the learned District Judge, Vaduj and withdraw Miscellaneous Civil Appeal No.31 of 2012. Statements made by Mr. Gujar, on instructions, are recorded.

7. In view thereof, respondent No.1 will file appropriate Purshis in the trial Court for withdrawal of Regular Civil Suit No.257 of 2011 and Regular Civil Suit No.27 of 2012. Upon filing such Purshis, the learned trial Judge will permit the plaintiff to withdraw the Suits and also consider refund of Court fees, if permissible as per Rules. Petitioners

will also file Purshis before the learned District Judge for withdrawal of Miscellaneous Civil Appeal No.31 of 2012. If such Purshis is filed, the learned District Judge will permit the petitioners herein to withdraw the appeal.

8. In view thereof, nothing survives in this Petition as the two Suits stand withdrawn. Hence, Petition is disposed of accordingly. All contentions on merits are expressly kept open.

**(R. G. KETKAR, J.)**

*Minal Parab*