

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.505 OF 2017
(Balaji Vithalrao Potdar Vs. Marotirao Vithalrao Potdar)

Mr.S.S.Gangakhedkar, Advocate for the petitioner.
Mr.P.P.Komple, Advocate for the respondent

(CORAM : Ravindra V.Ghuge, J.)

DATE : 08/09/2017

PER COURT :

1. I have heard the learned Advocates for the respective sides for quite some time.

2. This Court (Coram : S.B.Shukre, J.) after hearing the parties, has granted ad-interim protection to the petitioner in the nature of directing the parties to maintain *status-quo* in respect of the suit property.

3. The Trial Court, by its order dated 23/03/2016 had allowed application Exh.6 under Order 39 Rule 1 in Regular civil Suit No.426/2015. The original defendant filed Misc.Civil Appeal No.17/2016 and the same was allowed by the Appellate Court by judgment dated 13/12/2016. The injunctory order was quashed and set aside.

4. Both the learned Advocates have strenuously canvassed their respective grounds.

5. The issue is that the original defendant desires to initiate the construction of a house on the suit property. He had preferred RCS No.252/2005 for seeking partition and separate possession of the same suit property which was termed to be an ancestral property. RCS No.252/2005 was withdrawn by the respondent herein at the stage of the recording of his cross-examination. He has not filed a new suit.

6. The contention of the respondent is that the suit filed in 2005 was under duress and coercion of the petitioner herein who is a Police Officer. He had used his clout and exerted pressure on the petitioner. In fact, the father of the petitioner as well as the respondent herein had performed two marriages. Both the wives were alive in 2005. The petitioner and the respondent are step brothers. So as to facilitate peaceful co-existence, the father of these litigating sides had partitioned his properties in 1984 and mutation entries to that effect were carried out on the basis of the said partition deed.

7. I find that since the respondent herein desires to construct a house on that portion of the suit property, on which he claims a title in the light of the partition of 1984, the construction would be in jeopardy if the construction is permitted to continue and eventually the petitioner/plaintiff succeeds in the suit. The issue of demolition of the house would then arise.

8. Learned Advocates for the respective sides, therefore, submits that a safe mode in these circumstances would be in the form of expediting RCS No.426/2015 considering the low pendency before the Trial Court at Degloor.

9. In the light of the above, this petition is disposed of by continuing the ad-interim order of *status-quo* passed by this Court on 20/02/2017. The Trial Court shall expedite RCS No.426/2015 and shall decide the same expeditiously within a period of 1 year, i.e. on or before 30/09/2018. Needless to state, the respondent is at liberty to raise all grounds and put forth his contentions and averments while filing a written statement in the said suit.

10. The litigating sides would extend their co-operation to the Trial

Court keeping in view that the petitioner makes a statement that he would not seek adjournments on unreasonable and frivolous grounds and shall pursue the said suit by rendering fullest co-operation. The Trial Court would be at liberty to impose costs on the party seeking adjournment on unreasonable and frivolous grounds.

11. In the light of the request of the petitioner and the consent of the respondent, both are agreeable to appear before the Trial Court on 18/09/2017. Request is accepted.

(Ravindra V.Ghuge, J.)