

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3394 OF 2017

Premchand Godhadu Yeole
Deceased Through LRs

PETITIONER

1. Sharad Premchand Yeole
Age - 49 years, Occ - Driver & Agriculture
R/o Station Road, Satyanarayan Chal
Old Jalna, District - Jalna
2. Nitin Premchand Yeole
Age - 45 years, Occ - Agriculture
R/o Kanalada, Taluka & District - Jalgaon
3. Smt. Aruna Vinayak Javale,
Age - 35 years, Occ - Household
R/o Bhadali Bdk. Taluka & District - Jalgaon
4. Smt. Vandana Vilas Narkhede
Age - 32 years, Occ - Household
R/o Ayodhya Nagar, Jalgaon
Taluka and District - Jalgaon
5. Shaligram Godhadu Yeole
Age - 65 years, Occ - Agriculturist
R/o Kanalada, Taluka & District - Jalgaon
6. Ashok Godhadu Yeole
Age - 64 years, Occ - Pensioner,
R/o Plot No. 52, Ganesh Colony,
Jalgaon, District - Jalgaon
7. Vastalabai Onkar Chaudhari,
Age - 70 years, Occ - Household
R/o At Post Asoda,
Taluka and District - Jalgaon

8. Smt. Sumanbai Ananda Kolhe
Age - 60 years, Occ - Household
R/o Post Asoda, Taluka & District - Jalgaon

VERSUS

Bhika Sakharam Yeole
Chamelebai Bhika Yeole
Both deceased through LRS

RESPONDENTS

1. Dapadu s/o Bhika Yeole
Age - 56 years, Occ - Agriculture
2. Pralhad s/o Bhika Yeole
Age - 45 years, Occ - Agriculture

Both R/o Kanalada, Taluka & District - Jalgaon

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Mr. Kishor C. Sant, Advocate for the petitioners
Mr. Pramod P. Dhorde, Advocate for respondents
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 14th JUNE, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally by consent.
2. Petitioners are defendants in Regular Civil Suit No. 121 of 2015 instituted by present respondents seeking declaration of ownership and perpetual injunction in respect of land bearing Gut No. 347 admeasuring about 1 Hectare 17 *Are* as described in the plaint. Along with the plaint, an application for temporary

injunction had been moved by present respondents. While deciding application Exhibit-6 for temporary injunction, trial court has referred to various documents, about seven as produced on behalf of present respondents and about thirteen on behalf of present petitioners and relying on a decision in Regular Civil Suit No. 302 of 1974, purportedly rejected the application Exhibit-6 without taking into account other documents which were on record or even commenting upon their effect and efficacy.

3. The matter was taken in appeal by present respondents and during pendency of appeal, an application came to be moved for production of certain documents, which appears to have been allowed. While production of documents has been allowed by the appellate court, copy of a document "*pursis*" in Regular Civil Appeal No. 116 of 1984 Exhibit-19 had been produced and with reference to that the appeal has been allowed by granting application for temporary injunction.

4. Even the appellate court's order does not appear to take into account any of the documents enumerated under order passed by the trial court and the appellate court largely appears to take into consideration the *pursis* and an application filed

before Tahsildar referred to in the order, in the list of documents at Exhibit-3 dated 18th April, 2015 and complaint dated 13th April, 2015.

5. In the circumstances, although case is pleaded very vehemently on either side, it appears to be expedient and in the fitness of things to relegate parties to trial court for reconsideration of application for temporary injunction of the plaintiffs for application of mind to the case pleaded on either side and the effect and efficacy of documents at the preliminary stage while considering application for temporary injunction, since both the orders appear to be deficient in respect of the same.

6. As such, orders passed by trial court on Exhibit-6 in Regular Civil Suit No.121 of 2015 dated 2nd July, 2015 and the one passed by appellate court dated 17th February, 2017 in Miscellaneous Civil Appeal No. 42 of 2015 stand set aside. Application Exhibit-6 stands restored for rehearing and consideration afresh. Writ petition, as such, stands allowed. Rule is made absolute in aforesaid terms. Application Exhibit-6 be proceeded with expeditiously without getting influenced by observations under this order, taking into account material

placed on record.

7. In addition to record already produced, parties are at liberty to give further material, if any, however exercise of decision making on Exhibit-6 be completed within a period of two months from the date of receipt of writ of this order.

[SUNIL P. DESHMUKH, J.]

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