

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7209 OF 2014
(Govind Rama Shelvane and another Vs. Dada Bhagwan Shelvane)
WITH
CIVIL APPLICATION NO.7289 OF 2015

Mr.M.V.Salunke h/f Mr.V.D.Salunke, Advocate for the petitioners.
Mr.N.S.Tekale, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 15/06/2017

PER COURT :

1. The petitioners are aggrieved by the order dated 01/07/2014 passed by the Appellate Court by which Misc.Civil Appeal No.55/2014 has been allowed and by setting aside the order of the Trial Court dated 04/06/2014, application Exh.5 has been allowed and injunction has been clamped upon the petitioners.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides.

3. There is no dispute that the litigating sides are related to each other and the suit property is an ancestral agricultural land. Though it is contended that there was a partition and division of shares

amongst the family members, the partition deed was not reduced into writing.

4. Issue is as regards whether the respondent is cultivating the eastern portion of the suit land ? Contention of the petitioners is that they are cultivating the suit land. If that is so, issue would be as to which is the portion of the land that has been occupied by the respondent and which land is he cultivating for the purpose of his livelihood ?

5. It is trite law that injunction cannot be clamped against a co-owner. However, in peculiar circumstances as like in the present case, the appellate Court had to decide as to whether the right of the respondent /original defendant in cultivating his portion of the land needs to be protected or not ? By the protective impugned order dated 01/07/2014, the respondent is cultivating the eastern side of the suit land for almost 3 years.

6. Considering the above, and the peculiarity of the factors in this case and looking at the age of petitioner No.1 who is 78 years old, petitioner No.2 and the respondent being 54 years old and the issue of cultivation of land being involved, I deem it proper to dispose off

this petition and direct the Trial Court to decide the suit within a time frame.

7. This petition is, therefore, disposed of. The impugned order would continue to operate during the pendency of the trial. The Trial Court shall decide RCS No.62/2014 as expeditiously as possible and preferably on or before 30/04/2018. Needless to state, the observations of the Appellate Court in the impugned judgment being at an interlocutory stage, would not influence the Trial Court while deciding the suit on its own merits.

8. Civil Application No.7289/2015 is, therefore, disposed of.

(Ravindra V.Ghuge, J.)