

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 08718 of 2017

District : Osmanabad

1. Shivaji Narayan Tarange,
Age : 22 years,
Occupation : Agriculture,
R/o. Ratnapur,
Taluka Paranda,
District Osmanabad.
2. Swati Zumber @ Pappu Tarange,
Age : 32 years,
Occupation : Agriculture & Household,
R/o. Ratnapur, Taluka Paranda,
District Osmanabad.
3. Saudagar s/o. Angad Tarange,
Age : 16 years,
Being minor u/g. of
Sunita Angad Tarange
(Petitioner no.4).
4. Sunita Angad Tarange,
Age : 45 years,
Occupation : Agriculture & Household, .. Petitioners
R/o. Ratnapur, (Original defendants
Taluka Paranda, Dist. Osmanabad. no.3, 4, 5 & 6)

versus

1. Motilal Devichand Gadiya,
Age : 57 years,
Occupation : Agriculture & Business,
R/o. Village Anala,
Taluka Paranda,
District Osmanabad.
2. Dada Vyanka Markad,
Age : 60 years,
Occupation : Agriculture,
R/o. Ratnapur,
Taluka Paranda,
District Osmanabad.

3. Narayan Maruti Tarange,
Age : 50 years,
Occupation : Agriculture,
R/o. Ratnapur,
Taluka Paranda,
District Osmanabad.

4. Angad Maruti Tarange,
Age : 52 years,
Occupation : Agriculture,
R/o. Ratnapur,
Taluka Paranda,
District Osmanabad.

5. Zumber @ Pappu Maruti Tarange,
Age : 40 years,
Occupation : Service (S.T. Driver),
R/o. Ratnapur, Taluka Paranda,
District Osmanabad.

.. Respondents
(No.1 - Original plaintiff
&
Nos.2 to 5 -
Original defendants
No.1, 2, 7 & 8)

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Mr. V.S. Undre, Advocate, for petitioners.

*Mr. Shoyab Shaikh, Advocate, for respondent
no.01 (caveator).*

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 10TH JULY 2017

ORAL JUDGMENT :

01. Learned Counsel for the petitioner fairly refers to that respondents no.02 to 05 are co-defendants and may not be necessary for adjudication of the petition. He, therefore, prefers to go ahead with the Writ Petition since respondent no.01 (caveator) - plaintiff is already represented before the court.

02. Rule. Rule made returnable forthwith. Heard learned Counsel for the parties by consent finally.

03. Petitioners are defendants no.03 to 06 in Special Civil Suit No. 03/2016 filed by respondent no.01 for declaration of ownership and perpetual injunction. Along with the suit, application for temporary injunction was filed by the plaintiff which was allowed. Aggrieved by the order under application - Exhibit 05, petitioners - defendants no.03 to 06 have preferred Misc. Civil Appeal No.02/2017 before the appellate court. Along with the appeal, petitioners have also filed an application for interim relief.

04. Learned Counsel for petitioners submits that while the appeal and the application had been pending, yet the plaintiff - respondent no.01 had preferred an application - Exhibit 66 before trial court, seeking Police protection. Under the circumstances, petitioners had filed an application - Exhibit 72 requesting to postpone hearing of Exhibit 66 till disposal of the Misc. Civil Appeal. Same has been rejected by the court observing as under :-

" Perused the application, say & record of the case. Heard the learned advocate for plaintiff, as he pointed out facts which are stated in say. The learned advocate for defendant nos.3 to 8 is absent for argument. No application for adjournment is filed. The learned advocate for plaintiff shown urgency in the matter. Hence application is taken up for disposal on merit. Defendants no.3 to 8 have not filed copy of appeal memo. Even as per contentions made in application itself, there is no stay order. Furthermore, no legal provision shown to stay proceeding. Hence, I do not find merit in present application. Hence it is hereby rejected. No order as to costs. "

05. Learned Counsel for petitioners submits that as a matter of fact, the suit land and the land purchased by petitioners are different lands having different Gut numbers and have no nexus to each other. The order under appeal is untenable and during pendency of the appeal, order of temporary injunction deserves to be stayed and, as such, application - Exhibit 72 for deferring hearing on application - Exhibit 66 should have been allowed by the trial court.

06. Learned Counsel for respondent no.01 (caveator), however, contends that the order is legal and proper. The court before which the application has been made has no power to stay the proceedings under Exhibit 66 and, as such, no fault can be found with the order.

07. Having heard learned Counsel for petitioners and the overall scenario, it is expedient that the Misc. Civil Appeal itself would be heard and decided expeditiously. Since it is given to understand that the application for interim relief under Misc. Civil Appeal No. 02/2017 has been rejected, instead of getting obfuscated by said order and refusal of the trial court to defer hearing, it would be expedient and in the interest of justice, that Misc. Civil Appeal No. 02/2017 itself is proceeded with expeditiously and disposed of on merits. It is given to understand that the appeal is posted for hearing on 20th July 2017, before the appellate court.

08. In view of the aforesaid, the petition is disposed of expecting that the appellate court would decide Misc. Civil Appeal No. 02/2017 as expeditiously as possible and preferably before 31st July, 2017. It is further expected that the trial court may defer hearing on application Exhibit 66 till disposal of the Misc. Civil

Appeal. If hearing of the Misc. Civil Appeal is deferred for the reasons attributable to petitioners, the trial court may proceed with application - Exhibit 66 after 31st July, 2017.

09. Rule made absolute in the above terms. There shall be no order as to costs.

(Sunil P. Deshmukh)
JUDGE

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