

WRIT PETITION NO.10882 OF 2016

Petitioners

Respondent

Mr. R.K. Jadhavar advocate for Respondent

(Date : 21st June, 2017.)

1 The petitioners are aggrieved by the order dated 28.4.2015, by which the trial Court has allowed Application Exh.5, filed by respondent No.1 – plaintiff in RCS No.263/2014 and has clamped an injunction upon the petitioners, by invoking order 39 Rule 1 of the Civil Procedure Code. The petitioners are also aggrieved by the Judgment dated 28.9.2016 delivered by the Appellate Court, by which the Miscellaneous Civil Appeal No.188/2015 filed by the petitioners has been dismissed with costs.

2 The contention of the petitioners is that petitioner No.1 is
the son of Shyamrao Shinde. Shyamrao Shinde married the
plaintiff Vatsalabai which was a second marriage. Petitioner No.1

is the son born out of the first legal wedlock and petitioner Nos.2, 3 and 4 are the sons of petitioner No.1 Bhausahab.

3 Vatsalabai filed the Suit, seeking injunction against the petitioners – defendants and has prayed for preventing the defendants from disturbing her peaceful possession. Shyamrao has passed away and Vatsalabai claims that after the passing away of Shyamrao, the defendants are disturbing her possession.

4 Learned counsel for the petitioners submit that Vatsalabai has no right in the property, since she is a second wife of Shyamrao. Eventually, she would not be entitled to any share in the land earlier owned by Shyamrao. He, therefore, submits that the Trial court as well as the Appellate Court should have taken this aspect into consideration and should have refused clamping injunction upon the defendants.

5 I have considered the submissions of the learned Advocates.

6 It is trite law that, when it comes to the grant of injunction and where the suit has been filed for perpetual injunction, at the prima facie stage, the trial Court is expected to find out whether the plaintiff is in possession of the immovable property.

7 The suit property at issue is an ancestral agricultural land. Record reveals that Shyamrao has carried out a partition of the agricultural land and had allotted one portion of the land to Vatsalabai. Apparently this was with an intention of maintaining peace between both the wives and to enable Vatsalabai to sustain herself after Shyamrao. The present suit has been filed by Vatsalabai, after Shyamrao has passed away since the sons of Shyamrao's first wife and the grand children of Shyamrao have started disturbing the peaceful possession of Vatsalabai. It was in this backdrop that the Trial Court has passed a reasoned order and has concluded that prima facie Vatsalabai is in possession of the land admeasuring 1-H and 20-R in gut No.988. A mutation entry No.6064 also indicates that the said portion of land was allotted to Vatsalabai.

8 The Appellate Court has considered all these aspects and has concluded that the mutation entry dated 10.5.2007 which was sanctioned by the Revenue authorities, after the partition of the land was carried out, stands in the name of Vatsalabai who was allotted 1-H and 20-R land. Shyamrao passed away on 11.2.2008 and the Appellate Court, therefore concluded at the prima stage, that Vatsalabai is in possession of the land at issue, she should not be dispossessed and she deserves to be protected.

9 Apparently, there are concurrent findings against the petitioners. The Honourable Apex Court in the matters of **Syed Yakoob versus K.S. Radhakrishnan and others** (AIR 1964 SCC 447) and **Surya Dev Rai versus Ram Chander Rai** (2003 AIR 6,SCC 682) has concluded that an impugned order cannot be interfered with merely because a second view is possible. Unless the impugned order is perverse and erroneous and is likely to cause gross injustice, no interference is called for.

10 In the light of above, this petition being devoid of merit, is dismissed.

(RAVINDRA V. GHUGE , J)