

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4183 OF 2013

Krushnarao Ramchandra Salgude (Sawant) (decd) through
heirs Shakuntala Krushnarao Salgude and others ... Petitioners

Vs.

Sadanand Swami Deosthan Trust through
Balasaheb Kamalgiri Gosavi and another ... Respondents

Mr. V. S. Talkute for Petitioners.

Mr. A. V. Anturkar, Senior Advocate i/b. Mr. S. B. Deshmukh for Respondent
No.1.

CORAM : R. G. KETKAR, J.

DATE : MARCH 07, 2017

P.C. :

Heard Mr. Talkute, learned Counsel for petitioners and Mr. Anturkar, learned Senior Counsel for respondent No.1 at length. As the petitioners have sought relief only against respondent No.1 in application at exhibit-5, notice on respondent No.2 is dispensed with in this Petition. Rule. Mr. Deshmukh waives service for respondent No.1. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs', have challenged the judgment and order dated 11.03.2013 passed by the learned District Judge-2, Satara in Miscellaneous Civil Appeal No.3 of 2013. By that order, the learned District Judge allowed the appeal preferred by respondent No.1, hereinafter referred to as 'defendant No.1', and quashed and set aside the judgment and order dated 10.12.2012 passed by the learned 3rd Joint Civil Judge, Junior Division, Satara below exhibit-5 in Regular Civil Suit No.849 of 2012. The learned District Judge dismissed the application exhibit-5 and vacated temporary injunction.

3. In support of this Petition, Mr. Talkute has taken me through the order passed by the learned trial Judge. In particular, the learned trial Judge has referred to the Power of Attorney and observed that prima facie, at this stage, Power of Attorney is a suspicious document. The learned trial Judge also referred to the compromise decree as also possession receipt and observed that plaintiffs are prima facie possessing the suit properties. Defendants failed to establish their possession over the suit properties on the basis of documents of compromise and possession note because those are not executed directly by the plaintiffs. As against this, the learned District Judge allowed the appeal without referring to these documents. He further invited my attention to paragraph 25 of the impugned order. In paragraph 25, the learned District Judge observed that the legality of Power of Attorney dated 15.12.2008 can be decided during the course of trial as it is a question of law and fact. He, therefore, submitted that the impugned order deserves to be set aside.

4. On the other hand, Mr. Anturkar, after arguing the Petition for quite some time, states that respondent No.1 and the instructing Advocate are present in the Court. Respondent No.1 consents for setting aside the impugned order thereby restoring Miscellaneous Civil Appeal No.3 of 2013. He submits that all the contentions of the parties on merits may be kept open and the interim order passed by this Court may be continued pending the hearing of the appeal and the appeal may be directed to be disposed of in a time bound manner.

5. Mr. Talkute submits that in the event the appeal is adversely decided against the petitioners, the interim order which is operating in this Petition, may be continued for a period of 8 weeks.

6. In view thereof, Petition is allowed in the following terms:
 - a. Impugned order dated 11.03.2013 is set aside;
 - b. Miscellaneous Civil Appeal No.3 of 2013 is restored to the file of the District Court;
 - c. During the pendency of the appeal, the order passed by the trial Court restraining defendant No.1 from causing obstruction to the plaintiffs' possession over the suit properties shall remain in force;
 - d. The learned District Judge is requested to decide the appeal as expeditiously as possible and preferably within 8 weeks from the production of the authenticated copy of this order;
 - e. All contentions of the parties on merits are expressly kept open;
 - f. Rule is made absolute in the aforesaid terms with no order as to costs.
7. Parties to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

Minal Parab