

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7447 OF 2016

Madhukar Marutrao Rajgude
and Anr

..Petitioners.

Vs

Marutrao Sahebrao Rajgude

.. Respondent

Mr.Pramod J. Pawar, Advocate for Petitioners.

Mr. R.C.Jagtap i/b Jagtap and Jagtap, Advocates for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 23/01/2017

PC:

1. Heard Mr.Pramod Pawar, learned counsel for the petitioners and Mr.R.C.Jagtap, learned counsel for the respondent at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants', have challenged the Judgment and order dated 29.10.2015 passed by the learned 2nd Jt. Civil Judge, Jr. Dn., Phaltan below Exhibit-5 in R.C.S.No.115 of 2015 as also the Judgment and order dated 18.4.2016 passed by the learned District Judge-3, Satara in Misc. Civil Appeal No.207 of 2015. By these orders, the Courts below allowed the application made by the respondent, hereinafter referred to as 'plaintiff', and issued injunction restraining the defendants from causing obstruction to the plaintiff's possession over the suit property, more particularly described in the plaint.

3. In support of this petition, Mr Pawar invited my attention to paragraph 4 of the reply filed by the plaintiff opposing the stay application filed by the defendants. He further submitted that the learned District Judge proceeded on the footing that family partition of 2008 is not on record. He has invited my attention to the application dated 4.5.2015 made by the plaintiff to various officials of the State Government. In that paragraph, the plaintiff averred that defendant no.1 is in possession of the suit property. Even in the application dated 25.4.2016 made by the plaintiff to Police Superintendent, Satara, he expressed apprehension that while taking possession of the suit property from defendant no.1, he may be assaulted. Mr. Pawar submitted that all the circumstances clearly establish that the plaintiff is not in possession. He, therefore, submitted that the petition requires consideration.

4. On the other hand, Mr. Jagtap supported the impugned orders. He submitted that after considering the material on record, the Courts below have concurrently found that the plaintiff is in possession and accordingly issued injunction against the defendants. He submitted that the Courts below have properly exercised discretion and, therefore, no case is made out for interfering with the impugned orders.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused

the material on record. It is the case of the plaintiff that it is his self acquired property. As against this, it is the case of the defendants that the suit property is purchased from nucleus of the joint family. In that regard, the learned District Judge has observed in paragraph 10 that admittedly the suit land stands in the name of the plaintiff in the record of right. The learned District Judge also dealt with the material on record and dealt with the contention of the defendants that the suit property is purchased in the name of the plaintiff from the nucleus of the joint family. The learned District Judge has observed that no material is produced by the defendants to substantiate this fact. The learned District Judge has also dealt with partition of the year 2008 as also the Will executed by the plaintiff bequeathing the suit property in favour of son of defendant no.1. For the reason recorded in paragraphs 10 and 11 of the District Court Judgment, I do not find that the Courts below have committed any error in passing the impugned order. In fact, in paragraph 12 the learned District Judge observed that there is nothing to indicate that the trial Court has exercised discretion incorrectly and/or exceeding his jurisdiction or erroneously. Merely because the Appellate court came to the conclusion that itself is no ground to interfere with the impugned order. The learned District Judge has rightly applied the tests laid down in the case of *Wander Limited Vs. Antox India Private Limited, 1990 (Supp.) SCC 727*. Hence, no

case is made out for interference with the impugned order. Hence Petition fails and the same is dismissed.

(R.G.KETKAR, J.)