

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

WRIT PETITION NO.8332 OF 2017

Vilas Hindurao Pawar & anr. ... Petitioners

Vs.

Bapurao Hindurao Pawar & anr. ... Respondents

Mr.Pratap Patil for the Petitioners
Mr.Chandrakant Yadav for Resp. No.1

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 24, 2017**

P.C. :

1. This petition is filed under Article 227 of the Constitution of India against the order dated 21.6.2017 passed by the learned District Judge 2, Karad, District Satara in Miscellaneous Civil Appeal No.48 of 2016 whereby the learned District Judge has quashed and set aside the order dated 28.4.2016 passed on application below exhibit 5 in R.C.S. No.196 of 2016 which was in favour of the plaintiffs.

2. The plaintiffs and defendant Nos.1 and 2 i.e., respondents Nos.1 and 2 are the siblings. The plaintiffs have filed suit for partition and declaration. In the suit the learned Civil Judge, Junior

Division, restrained respondent No.1 temporarily from carrying out further construction of new house in the suit property that is described in para 1(d) of the plaint, till final disposal of the suit against which the Miscellaneous Civil Appeal was filed by respondent No.1 and the said appeal was allowed and the impugned order was quashed and set aside.

3. However, the learned District Judge directed respondent No.1 i.e., defendant No.1 to give undertaking before the trial Court that he will demolish the construction if the suit is decreed in favour of the suit property described in para 1(d) of the plaint. The said order is challenged by the plaintiffs in this petition.

4. In the course of submissions, it is found that the petitioners/original plaintiffs are having their respective houses at CTS No.175 of village Tambave, Taluka Karad, District Satara and respondent No.1/defendant No.1 is having his house on CTS No.230 of village Tambave, Taluka Karad, District Satara. It was submitted by the learned Counsel for the petitioners that neither the petitioners nor the respondents are disputing that the plaintiffs and defendant No.1 are having their respective houses on these two plots. However, the houses of the petitioners standing on CTS

No.175 is not on their name but it shows the name of respondent No.1/defendant No.1 as the owner in the record of rights. The learned Counsel for respondent No.1 / defendant No.1 makes a statement on instructions across the bar that the respondent No.1 / defendant No.1 has no objection to delete his name from the record of CTS No.175 of village Tambave and substitute the name of petitioners/plaintiffs in his place, subject to the outcome of the final disposal of the partition suit. The learned Counsel for respondent No.1 / defendant No.1 further submits that respondent No.1 has given an undertaking before the trial Court as directed by the learned District Judge to the said extent.

5. In view of the above submissions, the following order is passed:

- i) Respondent No.1 shall inform the office of the Record of Rights that in the place of his name, the names of his two brothers i.e., the petitioners are to be substituted subject to the final outcome of the Regular Civil Suit No.196 of 2016.
- ii) The above communication shall be done on or before 7.8.2017.

iii) No party shall create any third party rights in the suit property during the pendency of the suit.

6. Writ Petition is disposed of in the above terms.

(MRIDULA BHATKAR, J.)