

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13100 OF 2016

Hemant Nandkumar Shitole and another ... Petitioners
Vs.
Digamber Rohidas Agawane and others ... Respondents

Mr. Vishwajeet S. Kapse for Petitioners.
Mr. Vishwanath S. Talkute for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 07, 2017

P.C. :

Heard Mr. Kapse, learned Counsel for petitioners and Mr. Talkute, learned Counsel for respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 04.08.2016 passed by the learned 2nd Joint Civil Judge, Senior Division, Satara below exhibit-77 in Special Civil Suit No.44 of 2015. By that order, the learned trial Judge rejected the application made by the plaintiff for police protection in order to enable him to cultivate his land as defendant is causing obstruction to him.

3. Mr. Kapse submitted that respondent No.1 is the only contesting respondent. In view thereof, notice was issued to the respondent No.1 for final disposal of the Petition. Hence, Rule. Mr. Talkute waives service on behalf of respondent No.1. Notice on rest of the respondents is dispensed with. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Kapse has invited my attention to

paragraphs 3 and 4 of the impugned order. In paragraph 3, the learned trial Judge has observed thus,

“3) ... For disobedience of the injunction order separate remedy to that effect has been provided in law. Further who is (plaintiff or defendant) in possession of which part of the land of suit property is yet to get decided on the basis of evidence. Therefore, under such circumstances giving police protection to the plaintiff would be hazardous. Taking into account the stage of the suit, prayer in respect of which police protection is sought plaintiff is not entitled to seek police protection.”

5. In paragraph 4, the learned trial Judge has observed thus,

“4) ... In this suit plaintiff contends that defendant has caused obstruction to him, caused loss to his properties for that he filed complaint applications to the Phaltan Police station, but no action is being taken by the police on his complaints. Parties have also relied on the commissioner report, but that alone at this stage can not be taken into consideration in order to infer as to who is in possession of which part of the land of the suit property. In order to consider commission report other evidence are required. Therefore, at this stage no grave condition / situation is being made out by the plaintiff to grant police protection to him under which he would cultivate his land. ...”

6. Mr. Kapse submitted that while dismissing the Petition filed by defendant No.1, this Court has recorded finding that plaintiffs have established their possession. It was, therefore, not open to the learned trial Judge to observe that who is in possession (plaintiff or defendant) of which part of the land of the suit property is yet to get decided on the basis of evidence.

7. Mr. Talkute was not in a position to defend the observations of the learned trial Judge in paragraphs 3 and 4, quoted hereinabove.

8. In view thereof, impugned order cannot be sustained and as such, is liable to be set aside thereby restoring application exhibit-77. Hence, the following order:

a. Impugned order dated 04.08.2016 is set aside and

application exhibit-77 is restored. The learned trial Judge will proceed on the premise that plaintiffs are in possession.

b. The learned trial Judge will consider decisions of this Court in - (i) ***Shrimati Ratnabai Narayanrao Naik and another Vs. Shri Satwarao Narayanrao Naik***, AIR 1995 Bombay 61, and (ii) ***Nirabai J. Patil Vs. Narayan D. Patil***, AIR 2004 Bombay 225 and find out whether plaintiff has made out a case for grant of the relief and pass appropriate order;

c. The learned Principal District Judge, Satara is requested to assign the matter to the Judge other than the Judge, who has passed the impugned order. By way of abundant caution, it is clarified that this does not cast suspicion on the learned trial Judge, who has decided application exhibit-77;

d. Parties shall appear before the learned Principal District Judge, Satara on 14.02.2017 when the learned Principal District Judge is requested to assign the matter to the other Judge;

e. Rule is made absolute in the aforesaid terms with no order as to costs.

9. All the parties, including the Principal District Judge, Satara, to act on the authenticated copy of this order.

(R. G. KETKAR, J.)

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