

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

WRIT PETITION NO.67 OF 2017

Bhagwan Chandulal Shukla and
Ors.

..Petitioners.

Vs

Swapnil Sahebrao Kadam and
Ors

.. Respondents

Mr.Rahul S. Kadam, Advocate for Petitioners.

Mr. Avinash B. Avhad, Advocate for Respondents no 1,2,4 to 7.

CORAM : R.G.KETKAR,J.

DATE : 06/01/2017

PC:

1. Heard Mr.Rahul Kadam, learned counsel for the petitioners and Mr. Avinash Avhad, learned counsel for respondents no.1,2,4 to 7 at length. Respondent no.3 is already deleted. Rule. Mr. Avhad waives service for the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs', have challenged common Judgment and order dated 14.12.2016 passed by the learned District Judge-3, Baramati in Misc. Civil Appeal No. 36 of 2012 and Misc.Civil Appeal No. 78 of 2014. The learned District Judge allowed the Appeals and quashed and set aside the Judgment and order dated 21.2.2012 below Exhibit-5 as also the Judgment and order dated 30.9.2014 below Exhibit-54

passed by the learned Civil Judge, Jr. Dn., Indapur in Regular Civil Suit No.158 of 2010.

3. By the Judgment and order dated 21.2.2012 below Exhibit-5, the learned trial Judge has issued injunction restraining defendants no. 1 to 3 from disturbing peaceful possession of the plaintiff over the land bearing Gat no. 178 (old survey no.80). Aggrieved by that order, defendants no.1 to 7 preferred Misc. Civil Appeal No.36 of 2012. During pendency of this appeal, the plaintiffs took out application Exh.54 for injunction restraining defendants no. 1 to 7 from creating third party interest in respect of the suit property. By order dated 30.9.2014, the learned trial Judge restrained defendants no.1 to 7 from creating third party interest and/or creating charge by obtaining loan from any financial institution. Aggrieved by that decision, Misc. Civil Appeal No. 78 of 2014 was preferred by defendants no.1 to 7. By the impugned order, the learned trial Judge allowed the appeals. It is against these orders, the plaintiffs have preferred this writ petition.

4. Mr. Avhad upon taking instructions submits that by consent, the impugned order may be set aside with direction to the trial Court to decide the suit within six months from receipt of the authenticated copy of this order. During this time, the plaintiffs may also be restrained from creating third party interest and/or charge over the suit property.

5. Mr. Kadam, upon taking instructions from Mr. Rakesh Shukla, brother of the petitioner no.3, states that during the pendency of the suit, the plaintiffs will neither create third party interest nor create charge over the suit property. Statement made by Mr. Kadam, on instructions, is accepted in the form of undertaking.

6. In view thereof, by consent of the parties, the petition is disposed of in the following terms:

(i) Impugned order dated 14.12.2016 passed by the learned District Judge in Misc. Civil Appeal No.36 of 2012 and Misc. Civil Appeal No.78 of 2014 is set aside;

(ii) The trial Court's order dated 21.2.2012 below Exh.5 and order dated 30.9.2014 below Exhibit 54 in R.C.S.No. 158/2010 is restored.

(iii) During pendency of the suit, the plaintiff shall neither create third party interest nor create charge over the suit property.

(iv) The learned trial Judge is requested to decide the suit within six months from production of the authenticated copy of this order. The learned trial Judge will decide the suit on the basis of evidence on record and in accordance with law uninfluenced by the observations made in the trial Court's order, District court's order and this order. All contentions of the parties on merits are expressly kept open.

(v) Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)