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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8355 OF 2018

Vishwanath s/o Vithalrao Jadhav PETITIONER
Age - 53 years, Occ - Service & Agriculture
R/o Plot No. 57, Near Chambarkund,
Shiv Nagar, Ambad Road,
Jalna, Taluka and District - Jalna

VERSUS

1. Vithalrao Chandrabhan Jadhav RESPONDENTS
Age - 72 years, Occ - Agriculture
2. Rukhminbai Vithalrao Jadhav,
Age - 65 years, Occ - Household
Both R/o Khadka, Taluka - Ghansavangi
District - Jalna

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Mr. B. N. Patil, Advocate for the petitioner

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[CORAM : SUNIL P. DESHMUKH, J.]
DATE : 25th JULY, 2018

ORAL JUDGMENT :

1. Heard learned advocate for the petitioner.
2. Writ petition has been moved by defendant in Regular Civil Suit No. 12 of 2017 pending on the file of Civil Judge, Junior Division, Ghansawangi, District - Jalna against concurrent decisions rendered by trial and appellate courts. The respondents - plaintiffs claim to be in possession of property jointly purchased by plaintiff No. 1 and his brother Natha Jadhav in 1973. In partition, eastern half portion of the property went to the share of brother of plaintiff No. 1 Natha and western half portion had fallen to the share of plaintiff No. 1.

3. The defendant, son of the plaintiffs, is resident of Jalna and had filed a suit for partition against the plaintiffs. After partition, the plaintiffs had constructed their property. Despite aforesaid, defendant is trying to interfere with and obstruct to the possession of the plaintiffs over the suit property and, as such, the suit ensued for perpetual injunction in respect of western side half portion of house No. 1 admeasuring about 728.5 square feet, as referred to in the plaint and prayer clauses.

4. Along with the suit, the respondents - plaintiffs had filed application for temporary injunction and the same had been allowed by trial court and confirmed by appellate court, finding that the respondents - plaintiffs have *prima facie* case in their favour as also the other two requirements, to grant injunction, favour the respondents-plaintiffs.

5. Both the courts on submissions on behalf of the defendant, have adverted to that the plaintiffs are not in possession of suit property. Plaintiffs are having no concern with the suit property. Plaintiffs have not given correct boundaries of the property and that the defendant is paying taxes in respect of the suit house.

6. Trial court has taken into account that Form No. 8 in respect of the suit house and affidavits of Vilas Apasaheb Jadhav

and plaintiff No. 1 support the plaintiffs' case. Trial court, as such, allowed the temporary injunction application.

7. Matter was taken in Miscellaneous Civil Appeal No. 42 of 2017 by present petitioner - defendant before District Judge, Jalna. Appellate court as well framed points for determination about *prima facie* case, irreparable loss and balance of convenience and has concurred with the observations appearing in the order passed by the trial court. Appellate court has considered rival submissions and the affidavits on record and found that there is dispute in respect of partition between the parties. The appellate court has further considered that Form No. 8 in respect of suit house is in favour of the plaintiffs as owners and in possession. The entry is not subjected to challenge as yet. The appellate court has further considered legal position that payment of tax is not an indication about possession of the property. The court has further adverted to that the defendant is serving at Jalna and is residing at Jalna. The court also found it to be probable that the plaintiffs' case carries lot more substance and in comparison to the same, the defendant may not have as strong case on merits.

8. Having regard to aforesaid, it appears that although it is contended that injunction cannot be granted against co-owner

from enjoying possession of the joint property, yet, in view of the observations recorded hitherto in the orders passed by the two courts, those are with reference to material placed on record at the stage of granting temporary injunction, there appears no error, apparent on the face of record, in the orders passed by both the courts. The courts have also gauged that *prima facie* case and balance of convenience tilt in favour of the plaintiffs and they are likely to suffer more in comparison to the defendant.

9. In the circumstances, it does not appear that the writ petition carries any weight with it. The same is, as such, not entertained and is rejected. It is given to understand that Regular Civil Suit No. 12 of 2017 is at the stage of evidence. In such a case, trial court may proceed with the suit expeditiously and dispose it of as early as possible, preferably within a period of nine months from the date of receipt of writ of this order.

10. Needless to refer to that observations of the courts hitherto and this court in this order are at *prima facie* and at premature stage before evidence has begun. The suit shall be decided on its own merits without getting bogged down by the observations thus far.

[SUNIL P. DESHMUKH, J.]

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Dinesh
Ramrao
Pawar

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