

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 8665 of 2018

Ganesh S/o Gulabrao Katke,
age 57 years occupation agriculture
R/o Indira Chowk, Nilanga
Taluka Nilanga District Latur.

...Petitioner

VERSUS

1. Parwatibai W/o Gulabrao Katke,
age 75 years occupation agriculture and household
R/o Palpur Taluka Nilanga District Latur,
at present Nilanga District Latur.
2. Kondiram S/op Gulabrao Katke,
age 53 years occupation Agriculture R/o as above.
3. Vishwanath S/o Gulabrao Katke,
age 51 years occupation and R/o as above
4. Suman W/o Datta Poul,
age 48 years occupation household
R/o Salegalli, Latur Taluka and District Latur.
5. Mangal W/o Sitaram Mole,
age 45 years occupation household
R/o Goregaon, Mumbai
6. Smt. Meena W/o Hanmant Kawale,
age 43 years occupation household
R/o Gulbarga Taluka and District Gulbarga
(Karnataka)

...Respondents

Mr R.K. Ashtekar, Advocate for petitioners.

Mrs. Anagha Pedgaonkar, Advocate for respondents No. 1 to 3.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 1st August, 2018

ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. Petitioner has preferred this writ petition, aggrieved by order dated 19th July, 2018 on Exhibit - 67 in regular civil suit bearing No. 223 of 2015.
3. Learned counsel for petitioner contends that impugned order is harsh, pursuant to which under police protection possession of suit land is being taken over. He submits that the petitioner and respondents No. 1 to 3 are co-owners of the property concerned and in the circumstances, it would be improper that co-owner is inhibited by seeking aid of police. He further submits that trial court has been in gross error in granting application while circumstances do not warrant police aid to be given to respondents No.1 to 3. He, therefore, urges to intercept the order and grant request made in the petition.
4. On the other hand, learned counsel Mrs. Anagha Pedgaonkar submits that looking to background in which respondents No.1 to 3 were compelled to make application Exhibit - 67 for police aid, impugned order would not be faulted with.
5. Learned counsel Mrs Pedgaonkar refers to that regular civil suit No. 223 of 2015 had been filed by present respondents

No.1 to 3 seeking injunction against defendants therein including present petitioner, whereas, petitioner has filed a counter claim in the same and had also sought injunction against plaintiffs. While application Exhibit - 5 for temporary injunction of plaintiffs/respondents No.1 to 3 came to be allowed and application Exhibit - 32 filed by present petitioner for temporary injunction against plaintiffs has been rejected, miscellaneous civil appeal bearing No. 13 of 2015 has been preferred by present petitioner aggrieved by injunction clamped against him. Same has been dismissed. Writ petition bearing No. 9478 of 2015 had been filed before this court against dismissal of aforesaid miscellaneous civil appeal No. 13 of 2015 which met with failure. She submits, clamping of injunction against petitioner did not relieve respondents No.1 to 3 from botheration in respect of enjoyment of the suit land. It has been alleged that writ petitioner has been harassing them and has been threatening. In the circumstances, police aid has been sought under Exhibit - 67.

6. After hearing parties and taking stock of the situation and proceedings in the litigation, the trial court has also referred to that in the situation, having regard to decision in the case of *Smt. Renubai Narayanrao Naik and others Vs. Shri Satwarao Narayanrao Naik* reported in *AIR 1995 Bombay 61* and considering that in exceptional cases resort can be had to grant police aid, Exhibit - 67 has been

allowed. The court has also referred to that plaintiff No.1 is a woman of 75 years of age and, thus, had sought assistance of police by making application to police station. It thus, appears that after taking into consideration the situation in the case and having regard to exceptional circumstances trial court had granted police aid. Despite orders passed against petitioner injuncting him from interfering into possession of respondents No.1 to 3 over suit land, the petitioner has ventured to continue to assert his claim of possession. He further continues with the contention that as per the partition deed, petitioner, who is taking care of mother, would cultivate suit land and after her demise it is to be divided. The contentions are quite venturesome that can be gathered at this stage since mother herself is before the court seeking aid against petitioner.

7. Writ petition, therefore, is not being entertained and is dismissed.

8. Observations made hereinbefore in this order shall not affect merits of the case and shall not influence the decision making in the suit which shall be on its own merits.

9. At this stage, learned counsel for petitioner seeks extension of protection as has been operating under the

orders of the trial court for a period of two weeks. However, looking to the circumstances of the case, it does not appear it would be proper to indulge into the request. The prayer is rejected.

**(SUNIL P. DESHMUKH)
JUDGE.**

Madkar