

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

919 WRIT PETITION NO. 8961 OF 2017

DATTATRAYA NARAYAN LAHARE AND ANOTHER
VERSUS
RAMNATH BHIMAJI GAWALI AND ANOTHER

WITH

WRIT PETITION NO.8962 OF 2017

DATTATRAYA NARAYAN LAHARE AND OTHERS
VERSUS
RAMNATH BHIMAJI GAWALI AND OTHERS

...

Advocate for Petitioners : Mr. Rahul A. Tambe.

Advocate for Respondents : Mr. Shailesh S. Chapalgaonkar.

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CORAM : **V. K. JADHAV, J.**

DATE : 08th February, 2018.

ORDER:

. In Writ Petition No.8961 of 2017, the Petitioners / original Plaintiffs have challenged the judgment and order passed by District Judge-2, Kopargaon dated 3rd May, 2017 in Miscellaneous Civil Appeal No.6 of 2017 and in Writ Petition No.8962 of 2017, the judgment and order dated 3rd May, 2017 passed by the same District Judge in Miscellaneous Civil Appeal No.7 of 2017.

2 The Petitioners / original Plaintiffs in Writ Petition No.8961 of 2017 have instituted the suit bearing Regular Civil Suit No.302 of

2016 for a decree of perpetual injunction and also filed an application Exhibit 5 for issuance of the order of temporary injunction. The Trial Court has allowed the said application Exhibit 5. Being aggrieved by the same, the Respondents have preferred Miscellaneous Civil Appeal No.6 of 2017.

In Writ Petition No.8962 of 2017, the Respondents have instituted Regular Civil Suit No.351 of 2016 for mandatory injunction and also filed an application Exhibit 5 for issuance of the order of temporary injunction. The Trial Court has rejected the said application and therefore, the Respondents in Writ Petition No.8962 of 2017, preferred Miscellaneous Civil Appeal No.7 of 2017.

3 The only question requires to be dealt with in this case that the learned District Judge, Kopargaon has decided both the appeals without giving an opportunity of being heard to the Respondents.

4 The learned counsel for Petitioners in both the writ petitions submits that the Petitioners / original Respondents in both the miscellaneous civil appeals before the District Judge may be given an opportunity to argue the said appeals on merits.

5 The learned counsel for Respondents in both the writ petitions submits that though the learned District Judge has heard the other side on 29th April, 2017 and posted the matter for hearing the arguments of the present Petitioners, the Petitioners and their counsel remained absent till 04:00 pm. Thus, after hearing the Respondents (Appellants before the District Court), the learned District Judge has decided both the miscellaneous civil appeals.

6 It appears that both the miscellaneous civil appeals are of the year 2017 and the learned District Judge-2, Kopargaon has decided both the miscellaneous civil appeals on 3rd May, 2017. It would be just and appropriate if the Petitioners herein given one more opportunity to argue the miscellaneous civil appeals before the learned District Judge. Hence, the following order:

ORDER

- I. Writ Petition Nos.8961 and 8962 of 2017, are hereby partly allowed. No costs.
- II. The judgment and order dated 3rd May, 2017 in Miscellaneous Civil Appeal No.6 of 2017 and the judgment and order dated 3rd May, 2017 in

Miscellaneous Civil Appeal No.7 of 2017 passed by the District Judge-2, Kopargaon, are hereby quashed and set aside with the following directions:

- a) Both the matters are remanded to the District Court, Kopargaon.
- b) Miscellaneous Civil Appeal No.6 of 2017 and Miscellaneous Civil Appeal No.7 of 2017 shall be restored to their original number.
- c) The learned District Judge shall dispose of both Miscellaneous Civil Appeal No.6 of 2017 and Miscellaneous Civil Appeal No.7 of 2017 after giving an opportunity of being heard to both the parties.
- d) The parties shall appear before the District Court, Kopargaon on 26th February, 2018.

III. By order dated 17th July, 2017 passed in Writ Petition No.8962 of 2017, while granting interim relief, this Court has directed the Petitioners to deposit an amount of Rs.5,000/- to show

bonafide. Since the petition is disposed of, the said amount, if deposited by the Petitioners, be refunded to them. The learned counsel for the other side has no objection for the same.

IV. Both the writ petitions are accordingly, disposed of.

[V. K. JADHAV, J.]

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