

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

926 WRIT PETITION NO.9353 OF 2016

Namdeo Bhaurao Shelke and others. Petitioners.

Versus

Sambha Narayan Sontakke and another. Respondents.

...

Advocate for Petitioners : Mr.Sant Kishor C.

Advocate for Respondents 1,2 : Mr A N Nagargoje h/f Panpatte V.S.

...

CORAM : N.M. Jamdar, J.

Dated: 18 December 2018

PER COURT :-

1. Heard learned counsel for the parties.
2. The petitioners have challenged the concurrent orders passed by the learned District Judge, Kandhar dated 1 August 2016 and the order passed by the learned Civil Judge, Mukhed dated 25 February 2015. The petitioners/defendants have been restrained by grant of temporary injunction.
3. The learned counsel for the petitioners firstly contended

that both the Courts have not taken into consideration the findings recorded by the Tahsildar under the Maharashtra Land Revenue Code, which findings are in favour of the petitioners. It was also contended that the suit was initially filed by three plaintiffs and one of the plaintiffs, who was party in the proceedings before the Tahsildar, withdrew the suit to his extent and remaining two plaintiffs have prosecuted the suit to come out of the findings of the Tahsildar and they were disentitled for any relief of temporary injunction for this conduct.

4. As regards findings of the Tahsildar and the order passed under the Code, said order is the subject matter of challenge in the suit. It is to test the correctness of this order, that suit has been filed. Both the Courts have looked into the evidence *prima facie* and have come to the conclusion that the respondents/plaintiffs have made out a case for grant of temporary injunction. As regards the withdrawal of the suit by one of the plaintiffs is concerned, since he has withdrawn the suit to his extent, an order passed in the suit will not govern him. As regards other plaintiffs are concerned, it is pointed out that they were not the parties to the proceedings before the Tahsildar. The order of injunction granted by the Trial Court is operating since 2015. The view taken by both the Courts on assessment of evidence is a possible view.

5. In these circumstances, no interference is warranted in the impugned orders. It is clarified that the observations made in the impugned order and this order are prima facie and the suit be tried on its own merits.

6. It is informed that the suit is pending since 2013. Since the suit is older than five years, the learned Civil judge under the drive undertaken for disposal of the suits which was pending for more than five years will take the suit for disposal under that category.

7. Writ Petition is disposed of.

(*N.M. Jamdar, J.*)

...