

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

WRIT PETITION No. 12983 OF 2018

Arjun Bala sirsat and others

... Petitioners

Versus

Faridabegum Muktar Ahemad Hashmi and others ... Respondents

Mr. U.L. Telgaonkar, Advocate for petitioners

Mr. B.R. Kedar, Advocate for respondents.

Coram : N.M. Jamdar, J.

Date : 5 December 2018.

ORAL ORDER :

1. By this petition, the petitioners have challenged the judgment and order passed by the learned District Judge-2, Ambajogai, in Misc. Civil Appeal No. 30 of 2018 setting aside the order passed by the learned Civil Judge (Senior Division), Ambajogai below application Exhibit 5 restoring the application below Exhibit 5 on the file of the learned Civil Judge (Senior Division), Ambajogai, to be decided afresh, in the light of the observations made in the order.

2. The petitioners have filed the suit for declaration that the petitioners are owners of the suit land. The petitioners have also sought the declaration that since the petitioners are owners of the suit land and sale deed executed by defendant No.1 in favour of defendants No. 2 to 9 be declared as void. Based on this claim of ownership the order of injunction is sought. The learned District Judge while remanding the application to the learned Civil Judge has observed that the learned Civil Judge at-least should have recorded prima facie finding as regards the claim of petitioners of ownership. There is no perversity or error in this approach. The petitioners have not come with the claim of only being in long standing possession seeking simplicitor injunction not to be dispossessed without due process of law. The petitioners claim protection on the ground of title. If the petitioners have made a claim of ownership, it is incumbent on the petitioners to show at-least a prima facie case.

3. In view of the pendency of this petition, the learned Civil Judge has not been able to proceed with the application. There is no interim order in this petition since September 2018. In these circumstances, it will be appropriate to direct the learned Civil Judge (Senior Division) to dispose of the proceedings below Exhibit No.5 at an early date. Since the learned Civil Judge would be considering the

matter afresh, it is clarified that any observations made in this order and the impugned order will not affect outcome of the application.

4. The learned Civil Judge to decide the application below Exh. 5 within a period of three months from today.

5. The writ petition is disposed of keeping all the contentions of the parties open.

N.M. Jamdar, J.