

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5916 OF 2017

Pushpraj Shantinath Kole ... Petitioner

Versus

Dadaso Ashok Kole & Ors. ... Respondents

Mr. U. R. Mankapure for Petitioner.

Mr. Manoj A. Patil for Respondent Nos. 3 to 5.

CORAM : NITIN W. SAMBRE, J.
DATE : 15th OCTOBER 2018.

P.C.

. At the outset, motion is made by the learned Counsel for Petitioner – Judgment debtor for deletion of Respondent Nos.1, 2, 6 to 10. The deletion is permitted at the risk and peril of the Petitioner. Amendment to be carried out forthwith.

2. By the Judgment and Decree passed in Regular Civil Suit No. 132 of 2008 on 25th August 2015 the suit for partition against the present Petitioner/original Defendant in the suit came to be decreed.

3. The Petitioner – a purchaser during the pendency of the suit based on the registered Agreement of Sale dated 2nd February 2008 has

filed cross-objection in Regular Civil Appeal No. 61 of 2015 in which an application for stay to the execution of the decree came to be moved which is rejected vide impugned order dated 14th March 2017 by the learned District Judge-1, Ichalkaranji. As such, this Petition.

4. Heard respective Counsel of the parties for some time.

5. The learned Counsel for Petitioner submits that the Petitioner is in continuous possession by virtue of sale-deed dated 15th May 2008 i.e. almost for last ten years. Even if the suit for partition is decreed, the same is at the behest of minors, who claimed to be successors to the title holder who has transferred the same in favour of the present Petitioner. According to him, the hearing of the Appeal and the cross-objection can be expedited by protecting the possession of the present Petitioner who holds title by virtue of the registered sale-deed.

6. *Per contra*, the learned Counsel for Respondent Nos.3 to 5 – Decree Holders would urge that once the finding of the property being ancestral one is recorded by the trial court and the prayer for injunction at the behest of predecessor in title of the present Petitioner is rejected, the present Petitioner cannot claim better title or right over the suit property. According to him, there is adjudication by the trial court about their right

to have partition and separate possession of the share in the suit property. The Petitioner cannot be made entitled in law for the interim relief. As such, a prayer is made for rejection of the Petition.

7. Considered rival submissions.

8. From the record it could be inferred that by virtue of registered sale-deed dated 15th may 2008 after the Petitioner parted with consideration, he was put into possession of the suit property i.e. an agricultural land and he is in continuous possession of the same for last ten years.

9. Even if a suit for partition at the behest of minors who are children of the title holder who have created title in favour of the Petitioner is decreed, still fact remains that the appellate court is required to re-appreciate the entire gamut of the matter including the factual matrix and the evidence and to give a fresh verdict.

10. Considering the right of the present Petitioner to pursue his cross-objection and he being in settled possession for last ten years, in my opinion, the objection raised by the learned Counsel for Respondents – Decree Holders needs to be overruled.

11. In the aforesaid background, the order impugned dated 14th March 2017 passed in Civil Appeal No. 61 of 2015 is hereby quashed and set-aside with further direction that till the aforesaid Appeal is finally decided, there shall be stay to the possession only.

12. The hearing of the Regular Civil Appeal No. 61 of 2015 pending on the file of District Judge-1, Ichalkaranji is expedited.

13. Parties agree that there is no need to file paper book, as record of the trial court is already called by the learned appellate court.

14. The appellate court shall make endeavour to decide the Appeal within a period of 12 months from today.

(NITIN W. SAMBRE, J.)