

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 5079 of 2017

Ganesh Narayan Gurav & Ors.. ..Petitioners.
Vs

Vasudev Tanaji Shitap & OrsRespondents.

Mr Bhushan Walimbe, for the Petitioners.
Mr. Rakesh Pathak for Respondent No.1.

CORAM : B. P. COLABAWALLA, J.
DATED :- 10th December, 2018.

P.C. :

1) By this writ petition the petitioners challenge the order dated 27th March, 2017 passed by the Court of District Judge, Ratnagiri at Ratnagiri in Misc. Civil Appeal No.5 of 2017. By the impugned order the Appellate Court allowed the appeal filed by the respondents herein.

2) Regular Civil Suit No. 28 of 2016 was filed by the petitioners for declaration and injunction. In that suit, the petitioners had also filed an application below Exh.9 seeking temporary injunction, restraining the defendants (respondents herein) from disturbing the possession of the

petitioners till disposal of the suit. Exhibit 9 came to be allowed by the Trial Court. It was that order of the Trial Court that was challenged in appeal by filing Misc.Civil Appeal No. 5 of 2017. This appeal came to be allowed by the impugned order and the order passed below Exh.9 by the Trial Court in Regular Civil Suit No. 28 of 2016 was set aside.

3) After hearing this matter for some time, both the parties have agreed before me that the trial of the suit has already commenced and the witness of the plaintiff is under cross-examination. Considering that the Trial is already at an advanced stage, I do not think that the petition should be entertained at this stage.

4) In the above circumstances, the writ petition is dismissed solely on the ground that it need not be entertained at this stage considering that the trial has already commenced. Since the trial of the suit has already commenced, the Trial Court is requested to hear and dispose of the suit as expeditiously as possible.

5) Both the parties before me have stated that neither of them shall seek any unnecessary adjournment before the Trial Court. Needless to clarify that any observations made either by the Trial Court or the

Appellate Court are only prima facie observations and shall not influence the Trial Court while deciding the suit finally. No order as to costs.

(B.P. COLABAWALLA, J.)