

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14279 OF 2017

Vitthal Dhulappa Siddha & Ors.	 Petitioners
V/s.	
Vishnu Shankar Patil & Ors.	 Respondents

Mr. Vinayak U. Gaikwad for the Petitioners.

Mr. Shankar Katkar, i/by Ms. Manisha Devkar, for Respondent No.1.

Mr. A.R. Metkari, A.G.P., for Respondent No.6-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 25TH APRIL, 2018.

P.C. :

1. Heard Mr. Gaikwad, learned counsel for the Petitioners, Mr. Katkar, learned counsel for Respondent No.1, and Mr. Metkari, learned A.G.P., for Respondent No.6-State.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 30th June 2017 passed by the District Judge-3, Islampur, thereby dismissing Miscellaneous Civil Appeal No.67 of 2016, which was preferred by the present Petitioners against the order dated 19th September 2016 passed

by the 4th Joint Civil Judge, Junior Division, Islampur, below the application at “Exhibit-6” filed in Regular Civil Suit No.220 of 2015. By the said order, the Trial Court has allowed the application for temporary injunction filed by Respondent No.1/Plaintiff, thereby restraining the present Petitioners, who are Defendant Nos.3 to 12, and other Defendants from causing obstruction to the possession of Respondent No.1-Plaintiff over the suit land.

3. Both the Trial Court and the Appellate Court had recorded a concurrent finding of fact that, it is Respondent No.1, who is in possession of the suit land and the Petitioners herein are causing obstruction thereto on the basis of the order passed in 'Consolidation Scheme'. Both the trial Court and the Appellate Court had, thus, held that, Respondent No.1 has made out the prima facie case for getting the relief of temporary injunction and if such relief is not granted, he will suffer irreparable loss and hardship.

4. Against this concurrent finding of fact, this Court, in the writ jurisdiction, cannot interfere, unless some perversity is pointed out therein. However, learned counsel for the Petitioners has failed to do so. Only three fold contentions are raised by learned counsel for the Petitioners by submitting firstly that, the Civil Court has no jurisdiction to try and entertain the Suit, in the context of Section 36-A of the

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. However, it is pertinent to note that the preliminary issue to that effect was raised before the Trial Court and it is already answered by the Trial Court in the affirmative vide its order dated 4th September 2015. In view thereof, the Appellate Court has rightly held that, unless that finding is challenged, it would not be proper to reconsider the same issue again in the present proceedings.

5. The second contention raised by learned counsel for the Petitioners is that, there is an effective remedy available under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, and Respondent No.1-Plaintiff could have availed the said remedy. However, as the Suit filed by Respondent No.1-Plaintiff is simplicitor for injunction and this application is also for the temporary injunction, such relief of temporary injunction can be granted, when there is an apprehension of dispossession, only by the Civil Court and that is the effective remedy and not the remedy under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, for redressal of such grievance.

6. It is submitted by learned counsel for the Petitioners that, the Minister of State is also having the power to grant the relief of temporary injunction. However, in my considered opinion, that will not

either bar the jurisdiction of the Civil Court to entertain the Suit or that may not and cannot be called as an equally effective remedy, which the Civil Court provides.

7. The third contention raised is that, mere pendency of the proceedings before the Minister of State cannot operate as a stay. However, that contention also cannot be of much help, while deciding whether the order of interim injunction granted by the Trial Court and the Appellate Court is on the prima facie finding that Respondent No.1-Plaintiff is in possession of the suit property, to disturb the said possession.

8. As a result, this Writ Petition holds no merits and hence, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]