

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4922 OF 2017

Smt. Kamal Vasant Mane and ors ... Petitioners

V/s.

Shri.Mahadeo Shankar Mane
and ors ... Respondents

Mr. N. V. Bandiwadekar, a/w Mr. Sagar A. Mane and
Mr. Vinayak Kumbhar i/by Sagar Mane, for the
Petitioners.

Mr. T. S. Ingale a/w Mr. Nikhil Pawar, for the Respondent
Nos. 1 to 3.

Mr. Pratap Patil, for respondent No.5.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 7th MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioners and
respondents.

2] By this petition filed under Article 227 of the Constitution
of India, the petitioners are challenging the order dated 10th April,
2017 passed by District Judge-3, Islampur, District: Sangli, thereby
dismissing Misc. Civil Appeal No.18 of 2017, which was preferred by
the present petitioners against the order dated 28.02.2017, passed
below Exh.6 in R.C.S.No.316 of 2016, by 6th Joint Civil Judge Junior

Division, Islampur.

3] The application at Exh.6 was filed for injunction restraining the present petitioners from causing obstruction to their possession in the suit property. After considering the entire documentary evidence and the affidavits filed on record, trial court was pleased to hold that respondents are in possession of the suit land as tenants and the petitioners have no concern therewith. The Appellate Court was also, after re-appreciation of the entire material on record, was pleased to confirm the findings of the fact arrived at by the trial Court. Hence in the writ petition, it follows that, this Court should be slow in interfering in the concurrent finding of fact arrived at by the trial Court and confirmed by the Appellate Court.

4] The submission of learned counsel for the petitioners is, however, to the effect that the trial Court has, in paragraph No.22 of its order, held that,

“From the documents on record, the possession/cultivation of the petitioners can be seen in gat No.272. However, on the face of the said documents it cannot be said that in which part of Gat No.272 the petitioners are in possession thereof”.

5] It is submitted that the Appellate Court has also in paragraph No.27 of its order observed that

“the plaintiffs-herein have admitted possession of

defendants in Gat No.272. However, according to plaintiffs, defendant Nos 2 to 15 are in possession of the the land which is towards west side of the suit property., that is in the share of defendant No.16 and defendant No.16 had impleaded them in the suit property. The defendants in their written statement have not shown any particular location of the land in gat No.272 which is in possession of defendant Nos 2 to 15”.

6] It is, thus, submitted that both the trial Court and Appellate Court have held that the petitioners are in possession of some portion of the land bearing Gat No.272. In such situation, the petitioners cannot be restrained from enjoying possession of their share in the suit land.

7] However, in this respect the description of the suit property as given in the paragraph No. 1(b) of the plaint is important. It clearly states that respondents-plaintiffs are claiming ownership of possession only over the eastern side portion to the extent of 2/3rd share in the area admeasuring 348.66 R, out of gat No.272. Therefore, respondent-plaintiffs have restricted their claim of possession only in respect of the 2/3 rd area of gat No.272. They have also specified that the said area of land is on eastern side and further given the four boundaries thereof, to identify it. To that limited extent only respondents are claiming injunction restraining petitioners from

causing obstruction to their possession. As regards the remaining area which is stated to be on western side of gat No.272, respondents have admitted the possession of the petitioners. Therefore, if both areas are different, possessions are different and considering the limited prayer sought by the respondents, only to the extent of their share, no fault can be found in the impugned order passed by the trial Court, which is confirmed by the Appellate Court, after considering the material on record.

8] The writ petition, therefore, being without merit stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]