

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

WRIT PETITION NO. 6571 OF 2018

Janardan Yashwant Waghmare

since deceased through legal heirs

1. Smt. Alka Janardan Waghmare & Anr. ... Petitioners

Vs.

Shri Rajaram Yashwant Waghmare & Ors. ... Respondents

.....

Mr. Shriram S. Kulkarni for the Petitioners.

Mr. Vagish Mishra a/w. Mr. Uttam Dubey i/b. Law Counsellors for
Respondent Nos. 8 and 9.

Mr. Girish R. Agrawal for Respondent No. 11.

**CORAM: MRS. MRIDULA BHATKAR, J.
DATED: AUGUST 08, 2018**

P.C. :

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.

2. This Petition invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is filed wherein the order dated 9th May, 2018 passed by the learned 6th Addl. Judge, Small Causes Court and Joint Civil Judge, Senior Division, Pune is challenged. The petitioners are the original plaintiffs

3. The plaintiffs have moved an application below Exhibit 215 directing defendant No.11 to maintain status quo in respect of the suit properties. The said application was rejected.

4. The learned Counsel for the respondents raised an objection in respect of maintainability of the Petition mainly on the ground that the petitioners have claimed reliefs under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908. He submitted that instead of Writ Petition, the petitioners should have filed Appeal from Order under Order 43 (r) of the CP.C.

5. The learned Counsel for the petitioners submitted that instead of filing a separate proceeding, the applications below Exhibits 5 and 125 praying for interim relief under Order 39 Rules 1 and 2 of the C.P.C. are to be heard expeditiously, as they are pending since 2013.

6. I am informed that the matter is fixed before the trial Court on 29th August, 2018.

7. In view of the above, it is appropriate to expedite and decide these applications. Hence, I pass the following order :

ORDER

- (i) The order, if any, passed at ad-interim level below Exhibit 5 or Exhibit 125 is hereby set aside.
- (ii) The trial Court is directed to hear and decide the applications below Exhibits 5 and 125 praying for interim relief afresh on or before 24th September, 2018 in accordance with law.
- (iii) Parties to co-operate the trial Court.
- (iv) Parties not to seek any adjournment.

8. Both the parties are directed to appear before the trial Court on 29th August, 2018.

9. With this, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)