

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 7093 OF 2015

WITH

CIVIL APPLICATION NO.845 OF 2018

Baburao Maruti Lokhande	]	
(since deceased) through LR.	]	
Dhananjay Baburao Lokhande	]	Petitioners
Vs.		
Popat Madhav Zhute (since deceased)	]	
through Lrs.	]	
1A. Lilabai Popat Zhute and others.	]	Respondents

WITH

WRIT PETITION NO.7094 OF 2015

WITH

CIVIL APPLICATION NO.850 OF 2018

Kisan Rambhau Handore through his Legal	]	
Heirs;	]	
1a)Kamal Kisan Handore and others.	]	Petitioners
Vs.		
Popat Madhav Zhute (since deceased)	]	
through Lrs.	]	
1A. smt. Lilabai Popat Zhute & Ors.	]	Respondents

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Mr. Pradip Kadam a/w Mr. Amey Deshpande, for petitioners.

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CORAM : R.G. KETKAR, J.

DATE : 2nd MAY, 2018.

P.C.

Heard Mr. Kadam, learned Counsel for the petitioners in both the Writ Petitions and applicants in both the Civil Applications at length.

2. Writ Petition No.7093 of 2015 takes exception to the judgment and decree dated 30th December, 2009 passed by the learned Civil Judge, Junior Division, Sinnar in Regular Civil Suit No.179 of 2005 as also the judgment and decree dated 24th April, 2015 passed by the learned District Judge-3, Nasik in Regular Civil Appeal No.23 of 2010. By these orders, the Courts below decreed the suit instituted by respondent No.1 Popat Madhav Zhute (since deceased) through his legal representatives, respondents No.2 to 4, hereinafter collectively referred to as “plaintiffs” and directed the petitioner, hereinafter referred to as “defendant” to hand over vacant possession of open land admeasuring 8'x10' feet of CTS No.3645 situate at Mouje-Sinnar, Tal. Sinnar, Dist. Nasik, specifically described in para 1 of the plaint.

3. Writ Petition No.7094 of 2015 takes exception to the judgment and decree dated 30th December, 2009 passed by the learned Civil Judge, Junior Division, Sinnar in Regular Civil Suit No.178 of 2005 as also the judgment and decree dated 24th April, 2015 passed by the learned District Judge in Civil Appeal No.25 of 2010. By these orders, the Courts below decreed the suit instituted by Popat Zhute (since deceased) through his legal representatives, hereinafter collectively referred to as “plaintiffs” and directed the petitioner, hereinafter referred to as 'defendant' to hand over vacant and peaceful possession of the open plot of land admeasuring 8'x10' feet of CTS No. 3645 situate at Sinnar, Taluka Sinnar, District Nasik, specifically described in para 1 of the plaint.

4. Civil Application No.845 of 2018 and 850 of 2018 are taken out by the petitioners in Writ Petition No.7093 of 2015 and Writ Petition No. 7094 of 2015, inter alia, praying for reduction of monthly compensation of Rs. 3,000/- as directed by this Court while admitting Writ Petitions on 14th August, 2015.

5. Writ Petitions along with Civil Applications were heard at length and judgment was being dictated in the open Court. Mr. Kadam states that the petitioner in Writ Petition No.7093 of 2015, Mr. Dhananjay Baburao Lokhande is present in the Court. He has tendered photo copy of his Aadhar Card. Mr. Kadam further states that the petitioner in Writ Petition No.7094 of 2015, Mr. Kisan Rambhau Handore is present in the Court. He has tendered photo copy of his Aadhar Card. Copies of Aadhar Cards of both the petitioners are taken on record and marked 'A Colly' for identification.

6. Mr. Kadam on instructions states that the petitioners will not press these Petitions if time of one year to vacate the suit premises is given to them. He submitted that he is making this statement after explaining the consequences of the statement to the petitioners and they have understood the same. They on their own volition are not pressing these Petitions. He further assures that on or before 11th June, 2018, the petitioners along with adult family members using the suit premises will give undertaking incorporating therein,

- [a] they are in possession and nobody else is in possession of the suit premises;
- [b] they have neither created third party interest nor parted with possession of the suit premises;
- [c] they will hereafter neither create third party interest nor part with possession of the suit premises;
- [d] within three weeks from today, petitioners will deposit the arrears, if any, in this Court.
- [e] They will hand over vacant and peaceful possession of the suit premises to the plaintiffs on or before 31st May, 2019.

7. In view thereof, on the motion made by Mr. Kadam, Petitions are

disposed of as not pressed. Eviction decree shall not be executed on or before 31st May, 2019 subject to the petitioners filing undertaking in the aforesaid terms in this Court on or before 11th June, 2018. It is made clear that if the petitioners do not file undertaking within the stipulated period, the Petitions shall stand dismissed without further reference to the Court and the respondents will be at liberty to execute the decree in accordance with law. Rule is discharged in both the Petitions.

8. In view of disposal of the Petitions, C.A. No.845 of 2018 and 850 of 2018 do not survive and the same are disposed of.

9. List the Petition for reporting compliance on 15th June, 2018.

[R.G. KETKAR, J.]