

Birwadi, Taluka : Palghar, and the house property situated thereon was owned by their cousin sister, Respondent No.1 Leela Thakur and other five sisters. Petitioner No.1 used to look after these sisters as they had no real brother. Hence, Respondent No.1 Leela Thakur and her sisters executed gift deed of the suit property in favour of the petitioners on 13.9.1988. On that basis, the petitioners have become the owners of the suit property. Their names, however, are yet not recorded in revenue record but they are actually in possession thereof. Recently, respondent Nos.1 to 5, who are legal heir of respondent No.1 and respondent No.2 her husband, started causing obstruction to their possession in the suit property. Hence, the petitioners filed this suit simpliciter for injunction. Therein, the petitioners had filed this application for interim injunction, which came to be resisted by the respondents denying the execution of the gift deed and also possession of the petitioners over the suit property.

4] The trial Court has, allowed the application for interim injunction, on the basis of the alleged gift deed, in favour of petitioner No.1 and certain documents like gram panchayat extract of House No.81 standing in the name of petitioner No.1; Gram Panchayat extract of house No.140(b), standing in the name of petitioner No.2 and the panchnama executed by the Talathi stating that the

petitioners are found in possession of the suit land.

5] When this order was challenged before the Appellate Court by the respondents, the Appellate Court found that the gift deed cannot be *prima facie* relied upon as genuine. Appellate Court also laid emphasis on the fact that in the revenue record of the suit land, the names of the petitioners are yet not appearing. Therefore, the Appellate Court reversed the order passed by the trial Court.

6] While challenging the order of the Appellate Court, submission of the learned counsel for the petitioners is that it was not proper on the part of the Appellate Court to set aside the well reasoned order passed by the trial Court, when the trial Court has relied upon the documentary evidence like panchanama conducted by the Talathi, the Grampanchayat extract of the house properties, showing that, the petitioners are in possession thereof.

7] According to learned counsel for the petitioners, as the Appellate Court has exceeded its jurisdiction by setting aside the impugned order of the trial Court, by substituting its own discretion in place of the discretion exercised by the trial Court, the impugned order passed by the Appellate Court is required to be quashed and set aside.

8] Per contra, learned counsel for respondents has supported the order of the Appellate Court, by submitting that the Appellate

Court has properly considered the entire documentary evidence on record and found that the discretion exercised by the trial Court was not based on proper appreciation of material. Therefore, in writ jurisdiction, no interference is warranted in the impugned order passed by the Appellate Court.

9] It is the case of the petitioners that the suit property was belonging to deceased respondent No.1 Leela Thakur and her five sisters namely 1) Hirubai Narayan Gharat, 2) Yamuna Sukanya Patil, 3) Bayabai Kashinath Thakur, 4) Kashibai Jethu Gawade and 5) Devikbai Bhikaji Patil. All of them have executed this gift deed of the suit property in favour of petitioners on 13.9.1988. The Appellate Court has rightly considered the fact that the gift deed produced on record bears Thumb impression of four persons only. Those thumb impressions are not even attested by any one of the witnesses. The Appellate Court also found that there is no thumb impression of defendant No.1 Leela Thakur on the alleged Gift-deed. Moreover, if the gift deed was executed in the year 1988 itself, then there is absolutely no explanation as to why, on the basis of said gift deed, names of the petitioners are not entered in the revenue record of the suit property till the year 2015. Moreover, when the suit property was voluntarily gifted by these sisters, what reason prompted them to obstruct the petitioners' possession over the suit property ?

10] In my considered opinion, the Appellate Court has rightly given importance to the entries in the 7x12 extract of the suit land which carry presumptive value under Section 157 of the Maharashtra Land Revenue Code; instead of the documents like panchnama carried out by Talathi to show possession of the petitioners.

11] The impugned order, therefore, passed by the Appellate Court, reversing the order of the trial Court, being legal and correct, in Writ jurisdiction, no interference is warranted therein. The Writ Petition, therefore, stands dismissed.

12] At this stage, learned counsel for the petitioners requests for extension of interim order passed by this Court, which is operating since the year 2016. Learned counsel for respondents resisted the said prayer.

13] In my considered opinion, as writ petition is decided on merits and stands dismissed, there is no reason to extend such order of interim injunction. Hence request to that effect is rejected.

[DR.SHALINI PHANSALKAR-JOSHI, J.]