

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

WRIT PETITION NO.11193 OF 2017

Ramchandra Govind Mane & Anr. .. Petitioners

Vs.

Arjun Balu Mane & Ors. .. Respondents

Mr.C.G. Gavnekar for the petitioners.

Mr.Drupad Patil for the respondent nos.2 and 3.

CORAM : R.D. DHANUKA, J.

DATE : 23rd August 2018

P.C.:

. By this petition under Article 227 of the Constitution of India, the petitioner has impugned the order dated 22nd August 2017 passed by the learned Ad-hoc District Judge-2, Kolhapur allowing the Misc. Civil Appeal No.159 of 2017 filed by the respondents.

2. The petitioner had filed a civil suit inter alia praying for perpetual injunction against the respondents in respect of the suit property. It was the case of the petitioners that the petitioners were the defendants in Regular Civil Suit No.145 of 2005 filed by Mr.Yogesh Ananda Mane & others for perpetual injunction. The petitioners did not lead any oral evidence in the said civil suit. The learned Civil Judge, Junior Division, Panhala passed a decree granting injunction against the petitioners herein and in favour of Mr.Yogesh Ananda Mane & others in the said suit. Few days after, the said decree came to be passed, the petitioners entered into an Agreement for Sale with Mr.Yogesh Ananda Mane & others in respect of the said property in question which was duly registered.

3. It is the case of the petitioners that since the respondents had right to obstruct the possession of the petitioners, the petitioners had filed the Regular Civil Suit No.121 of 2016 inter alia praying for perpetual injunction. Learned trial Judge passed an order of interim injunction in favour of the petitioners below Exhibit-5 on 18th April 2017. The Learned Ad-hoc District Judge-2, Kolhapur allowed the said Misc.Civil Appeal No.159 of 2017 filed by the respondents herein and has set aside the order dated 18th April 2017 below Exhibit-5 passed by the Civil Judge, Junior Division, Panhala in favour of the petitioners.

4. Mr.Gavnekar, learned counsel for the petitioners invited my attention to the decree passed by the learned trial Court against his clients in civil suit filed by the pre-decessor in title of the petitioners and also to a registered sale deed and would submit that the learned trial Judge had rightly considered the material on record and had granted injunction in the application below Exhibit-5 filed by the petitioners.

5. Learned counsel for the petitioners invited my attention to the findings rendered by the learned Ad-hoc District Judge-2, Kolhapur and would submit that the petitioners had never admitted in any of the statement recorded by the learned Deputy Superintendent of Land Record, the possession of the respondents and thus the entire order passed by the learned Ad-hoc District Judge-2, Kolhapur setting aside the order passed by the learned trial Judge is perverse.

6. Mr.Patil, learned counsel appearing for the respondent nos.2 and 3, on the other hand, invited my attention to the statement of the

petitioners recorded before the learned Deputy Superintendent of Land Record and would submit that though the said statement was recorded before the Deputy Superintendent of Land Record after filing of the suit for perpetual injunction, the said statement was admittedly recorded before the said application below Exhibit-5 was decided by the learned trial Court. The learned Ad-hoc District Judge-2, Kolhapur had rightly considered the said statement in the impugned order and had rightly observed that the respondents were admittedly in possession of the property in question.

7. Learned counsel also invited my attention to the orders passed by this Court on 10th October 2017, 27th November 2017 and 7th June 2018 and would submit that though this Court had granted ad-interim orders of status-quo in this writ petition, his clients were in possession of the suit property. The respondents were already harvesting sugarcane crop in the suit land. The respondents had filed Civil Application No.2908 of 2017 in this writ petition which came to be disposed of as infructuous in view of the fact that the order of status-quo was continued only upto 20th December 2017.

8. It is submitted by the learned counsel that though the petitioners have now alleged before this Court that the respondents had dispossessed the petitioners, the petitioners had never made a police complaint against the respondents. The allegation of dispossession of the petitioners is accordingly vague and without any particular.

9. A perusal of the order passed by the learned Ad-hoc District Judge-2, Kolhapur indicates that the appellate Court has considered the

statement made by the petitioners before the Deputy Superintendent of Land Record thereby admitting the possession of the respondents. It is not in dispute that the appellant had not led any evidence in the civil suit which was decreed against the petitioners. The name of the grand father of the respondents was admittedly recorded in the revenue record pursuant to the consolidation proceedings.

10. This Court had recorded the statement made by the respondents on 7th June 2018 that the respondents were harvesting sugarcane crop in the suit land. In view of the status-quo order not having been continued beyond 20th December 2017, the respondents did not press the civil application.

11. A perusal of the statement made by the petitioners before the Deputy Superintendent of Land Record prima facie indicates that the petitioners had admitted the possession of the respondents in the suit property. The Appellate Court has prima facie observed that except execution of the sale deed in favour of the petitioners executed by the pre-decessor of the petitioners, the petitioners could not produce any other proof showing their possession in the suit land.

12. Learned counsel for the petitioners could not dispute before this Court that it was the case of the respondents that the respondents were harvesting sugarcane crop in the suit land and had filed a civil application for vacating the order of status-quo. The said civil application however, came to be disposed of as infructuous in view of the status-quo order not having been continued beyond 20th December 2017.

13. In my view, in view of the subsequent events also after filing of this writ petition, nothing survives in the present writ petition impugning the order dated 22nd August 2017 passed by the learned Ad-hoc District Judge-2, Kolhapur. In my view, there is no merit in this writ petition. It is, however, made clear that the observations made by the learned trial Court, learned Ad-hoc District Judge-2 as well as by this Court are prima facie and are made for deciding the application below Exhibit-5. The writ petition is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.