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

WRIT PETITION NO.7911OF 2015

Ramchandra Y Karne and anr	...	Petitioners
V/s.		
Harishcandra Y. Karne	...	Respondent

Mr. Vishwanath S. Talkute, for petitioners
Mr. Pawan S. Patil, for respondent

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 26th APRIL, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner and respondent.
- 2] By this petition filed under Article 227 of the Constitution of the India, the petitioners are challenging the order dated 7.10.2014, passed by the District Judge-3, Satara, in Misc. Civil Appeal No.58 of 2013 which was preferred by the petitioners against the order dated 16.2.2013, passed by the Joint Civil Judge Junior Division, Phaltan, below Exh.5 in R.C.S.No.253 of 2011.
- 3] The petitioners are the original defendant Nos. 1 & 2. The petitioner No.1 and respondent, are the brothers inter-se. Petitioner No.2 is their father. The dispute pertains to the property which is their ancestral joint family property and it is relating to 8 ana share

therein given to respondent by petitioner No.2. Mutation entry to that effect bearing No.1574 is also effected. On the basis of the same, it was the contention of the respondent that as the petitioner No.1 is trying to carry out construction and thereby changing the nature of the suit property, petitioner No.1 be restrained from doing so and from causing obstruction to his possession in the suit property.

4] Alongwith the suit, the respondent has also filed an application for interim relief which came to be resisted by the petitioners herein contending inter alia that they are not intending to carry out any construction over the suit property. However, it was denied that 8 Ana share in the joint family property was given to the respondent. It was also submitted that the mutation entry No.1574 is already cancelled and set aside. In such situation, respondent cannot claim any exclusive right over the suit property. Petitioners are also the joint owners and occupants of the suit property. Hence, no interim relief can be granted.

5] The trial Court, has however, relying upon mutation entry No.1574 held that the respondent is in possession of the suit property in view of the partition effected by the petitioner No.2, the father. The order cancelling the Mutation entry is challenged. Hence, respondent is entitled to protect his possession. Accordingly the trial Court has restrained the petitioners from carrying out any

construction over the suit property and from changing the nature of the suit property. The trial Court has, further restrained the petitioners from causing obstruction to the possession of the respondent in the suit property.

6] When the petitioners challenged this order before the Appellate Court, the Appellate Court has confirmed the finding of the trial Court, by observing that the Mutation entry does not disclose as to which part of the land is allotted to the share of respondent and which part remains. The appellate Court, accordingly found that as the question is as to whether the eastern side portion of the suit land has been allotted to the share of plaintiff or not, is a matter to be decided at the time of final hearing, after recording of the evidence. However, till then if the petitioner No.1 demolishes the house and make changes in the suit property, it would cause prejudice to the rights of respondent and accordingly the trial Court confirmed the order passed by the trial Court.

7] Thus, it is apparent that in this concurrent finding of fact, recorded by the trial Court and confirmed by the Appellate Court, in writ jurisdiction, this Court should restrain itself from interfering in the said finding unless some perversity is shown therein.

8] According to learned counsel for the petitioners, the impugned order passed by the trial Court and confirmed by the

Appellate Court is proceeding on the ground that mutation entry No.1574 is yet not set aside. However, it is submitted that the Commissioner has set aside the Mutation Entry No.1574 and therefore, the basis on which order of the trial Court and the Appellate Court is proceeded, no more remains. Secondly, it is submitted that if the order of the Appellate Court itself shows that by the mutation entry No.1574, it is not clear which portion is allotted to respondent and which remains to petitioner No.2, it was not at all proper on the part of the Appellate Court to confirm such relief of interim injunction granted by the trial Court.

9] Moreover, it is submitted that the petitioner No.1 in his written say categorically stated that he is not intending to carry out any construction over the suit property, nor he wants to change the nature of the suit property. The appellate Court has, however, observed that the petitioner No.1 has not specifically denied the contention of the respondent that the petitioner No.1 is going to demolish the suit house and making change in the suit property. According to learned counsel for the petitioners, therefore, the impugned order passed by the Appellate Court suffers from the perversity. Hence, it needs to be set aside.

10] Per contra, learned counsel for the respondent has submitted that though the mutation entry No.1574 is set aside by the

Commissioner in Revenue Proceedings, respondent has challenged the said order by preferring Review Petition and it is still pending. Secondly, it is submitted that the impugned order of the trial Court, which is confirmed by the Appellate Court, is totally innocuous. It only restrains the petitioners from making changes in the suit property and that too without following due process of law. If the petitioners do not want to make any change in the suit property, then the said order is not going to cause any prejudice to the petitioners. Hence no interference is warranted in the impugned order.

11] I have given my thoughtful consideration to the submissions advanced by learned counsel for both the parties. It is a matter of record that as on today mutation entry No.1574, on the basis of which both the trial Court and Appellate Court, have proceeded to pass the impugned order, is set aside. Even if the Review Petition is pending, still the fact remains that the mutation entry stands set aside. It is also a matter of record that the sisters of petitioner No.1 and respondent, are also having share in the ancestral property. It is further a matter of record that the petitioner No.1 has made categorical statement in the written say and also before this Court that he does not intend to carry out construction in the suit property nor to change the nature of the suit property. This is the very relief of interim injunction granted by the trial Court. If the

property is joint family property and mutation entry No.1574 is set aside, then it follows that not only respondent but even the petitioner Nos. 1 and 2 are also entitled to remain in possession and enjoy the suit property.

12] Therefore, it would be just and proper to modify the interim relief which is granted by the trial Court and confirmed by the Appellant Court to the extent of setting aside the order restraining petitioners from causing obstruction to respondent in possession of suit property. It being a joint family property, both the parties can enjoy the suit property, but without making any change or carrying out construction therein so as to retain the status quo of the property till the decision of the suit.

13] Ordered accordingly.

14] The Writ Petition is disposed of in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]