

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6679 OF 2019

**SHANKAR S/O BABURAO KHABALE AND OTHERS
VERSUS
DATTU S/O GOROBA AGLAVE AND OTHERS**

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Advocate for the petitioners : Shri S. S. Gangakhedkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 11th JUNE, 2019.

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PER COURT :

1. The petitioners, who are original plaintiffs in RCS No. 213/2010, are aggrieved by the order dated 30/10/2015 passed by the Trial Court, by which, application Exhibit 73 filed by the petitioners seeking ad interim injunction under Order XXXIX Rule 1 (a) and (c) of the Code of Civil Procedure, has been rejected. They are also aggrieved by the judgment of the First Appellate Court dated 05/01/2019 rejecting their Misc. Civil Appeal No. 83/2015.

2. I have heard the learned Advocate for the petitioners for a long time. He has drawn my attention to the proceedings which have commenced with the filing of Regular Civil Suit

No. 102/1964 when Kisan who was the cousin nephew of Babu, initiated the suit for redemption of mortgage of his lands. The present petitioners claimed their shares through Shankar, who was one of the two sons of Babu. They have four sisters. Kisan has his heirs Rama, Bhagwan, Sham, Shahaji, Prayagbai and Suman, out of whom Suman is not a party to the proceedings and the rest are defendant Nos. 4 to 8. Babu is the cousin uncle of Kisan.

3. The contention of the petitioners is that as their claim to the title flows from Shankar, who was one of the two sons of Babu, the suit filed by Kisan which was dismissed by judgment dated 21/06/1965 would render Babu as the owner and title holder of the suit lands.

4. After I perused the said judgment threadbare, I find that Kisan had instituted the suit to seek a declaration that a sale-deed dated Magh Vadya Nine Shake 1839 by Rama, who is grand father of Kisan, in favour of Narayan who was the father of Babu, be declared a mortgage deed. The Trial Court, concluded that the said sale-deed cannot be declared to be a

mortgage deed. As the suit involved only this issue, the Trial Court did not proceed beyond the claims made in the suit and there was no declaration that Babu is the owner and title holder of the suit land.

5. The petitioners have then drawn my attention to another judgment dated 07/02/2014 in RCS No. 243/2002, in which, the L.Rs. of Kisan had initiated the suit against the L.Rs. of Babu, seeking a declaration of ownership and a declaration that the sale deed dated 06/07/2000 is not binding upon the plaintiffs. By a lengthy judgment running into 47 pages, the suit has been dismissed and it was held that the plaintiffs do not prove that they are the owners of 1/3rd share of the suit property on the basis of a will. It was also concluded that the plaintiffs are not the owners and are not in possession of 2/3rd share in the suit property. Based on this judgment, the petitioners herein, contend that they are presumed to be in possession of the suit properties.

6. I find from the record that the suit between the litigating sides has been lodged in 2010 bearing No. 213/2010. Since

the suit is 9 years old, recording of oral evidence and expediting the said suit would be pragmatic rather than analyzing the 57 years old history of litigation between three generations of the litigating sides on an interlocutory issue of whether, temporary injunction should be granted to these petitioners. In doing so, this Court would be required to peruse the entire record and proceedings of the litigation instituted in 1964 and onwards. Instead, since these petitioners are without temporary injunctory orders for the last 9 years, it would be appropriate, in my view, to direct the Trial Court to decide RCS No. 213/2010 as expeditiously as possible and preferably within a period of about 10 months.

7. In view of the above, this petition is disposed off with a direction to the Trial Court to decide RCS No. 213/2010 as expeditiously as possible and in any case, on or before 30/04/2020. It is made clear that since the Trial Court would decide the suit on its own merits and upon considering the oral and documentary evidence, it would not be influenced by the observations made in the interlocutory order dated 30/10/2015 and the observations of the Appellate Court in the

impugned order dated 05/01/2019 since they pertain to a *prima facie* appreciation of the material available for considering, whether, a temporary injunction would be granted.

(RAVINDRA V. GHUGE, J.)

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