

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8222 OF 2018

Shri Dattatraya Khanderao Kulkarni

Petitioner

Versus

Shri Madhukar Pandurang Kanherkar
& others

Respondents

Mr. R.B. Temak, Advocate for the petitioner.

Mr. N.V. Gaware, Advocate for respondents no. 2, 3A & 3B.

CORAM : M.S. KARNIK, J.

DATE : 9th August, 2019.

PER COURT :

1. Heard.

2. Learned counsel for the petitioner, assailing the order passed by the Ad-hoc District Judge -2, Ahmednagar, submits that the appellant Court was not justified in interfering with the order passed by the trial Court. The learned counsel would submit that the petitioner - original plaintiff had filed a suit against defendants for injunction. It is his case that even though there is no partition, defendant nos. 2 and 3 are forcibly trying to take possession over the suit property without following due procedure of law.

3. Learned counsel would rely upon the decision in Regular Civil Suit No. 22/2009 previously filed by the present defendants for perpetual injunction against the present petitioner. He would submit that in the said suit, the trial Court has found that the plaintiff therein (present defendant) had failed to prove his possession over the suit property. The said suit came to be

dismissed by the trial Court.

4. I have gone through the orders passed by the trial Court as well as the appellate Court. Admittedly, the property was jointly purchased by plaintiff and defendant no. 1.

5. Even in the decision relied upon by the learned counsel for the petitioner in Regular Civil Suit No. 22/2009, the trial Court has held that the plaintiff (defendant in this suit) could not prove his exclusive possession. It is further held that there was common possession of plaintiff and Shamkant over the suit property. It is in that context, the trial Court has held that the plaintiff therein (present defendant) could not prove exclusive possession and therefore, the question of obstruction does not arise.

6. Plaintiff and defendant no. 1 have jointly purchased the suit property. It is the contention of learned counsel for the petitioner that there is no partition. In this view of the matter, there cannot be any injunction against the co-owner. The appellate Court has correctly observed that plaintiff could not show his exclusive possession over the suit property by adducing evidence in support of his contention. I therefore, see no reason to interfere with the order passed by the appellate Court. The appellate Court has already directed the trial Court to expedite the suit and dispose of the same as early as possible. There is no merit in the petition and the same is accordingly disposed of with no order as to costs.

(M.S. KARNIK, J.)

dyb/