

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7999 OF 2018
AND
CONTEMPT PETITION NO.41 OF 2015
IN WP/6043/2010

YADAV PUNDALIK HIWRALE AND OTHERS
VERSUS
GOVIND YADAVRAO HIWRALE

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Advocate for Petitioner : Shri Darak B.A.
Advocate for Respondent 1 : Shri Ghatge Mahesh V.
Advocate for Respondents 3 & 4 : Shri Bedre V.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 25, 2019

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PER COURT :-

1. Heard the learned Advocates for the respective sides.
2. On 18.7.2018, this Court (Coram : Sunil P. Deshmukh, J.) has passed the following order:-

"1. Issue notice to the respondents, returnable on 14.8.2018.

2. Learned counsel for petitioners urges for interim relief, contending that while the suit had been instituted for declaration of ownership over suit property and the sale deed dated 27.04.2009 in favour of defendant no.2, to be void and further declaration that sale deeds dated 13-02-2012 and 25-04-2014 are not binding on plaintiff and for mesne profit at the rate of Rs.5,000/- per year, the suit came to be decreed declaring the

plaintiff to be owner and sale deeds to be null and void and not binding on plaintiff, however, along with the same, an order has also been made holding plaintiff entitled to recover suit land. In the appeal therefrom which is pending before district court, stay petition had been moved, however, the same is rejected. He, therefore, apprehends that under the garb of execution of decree, admitted possession of petitioners is likely to be disturbed.

3. *In the meanwhile, in view of submissions, petitioners' possession may not be disturbed.*

4. *In addition to service through court process, petitioners shall serve respondents by any legally acceptable private mode of service and file affidavit along with tangible proof to that effect before returnable date. In case of failure to serve respondents privately and file affidavit as directed before returnable date, ad-interim relief, as has been granted, would automatically cease to operate. "*

3. The learned Advocate for respondent 1 / original plaintiff submits that the original defendants 1 and 2 , who are petitioners before this Court in the Writ Petition, have taken a stand in the Contempt Petition No.41 of 2015, that they are not in possession and they have already alienated the suit property and the subsequent purchasers, who are defendants 4 and 5, are in possession of the said property.

4. He points out that when this Writ Petition came up before this

Court on 18.7.2018, a false statement was made, which is recorded in paragraph No.2 that the petitioners apprehend that their admitted possession is likely to be disturbed by the plaintiff under the garb of execution of a decree.

5. It is, therefore, submitted that the petitioners have specifically made a statement before this Court, which is untrue and have mis-led the Court only to secure interim protection which was even refused by the appellate Court.

6. Shri Darakh, learned Advocate appearing for these petitioners concedes that they, namely, Yadavrao and Vishwambhar, are not in possession of the said property, which was sold in 2009, 2012 and 2014 through different sale deeds.

7. I have perused from the memo of the petition that no where the petitioners have disclosed that after selling the suit property, the possession has already been handed over to the purchasers and they are not in possession.

8. Learned Advocate for the petitioners tenders an apology on behalf of the petitioners and submits that this Court may not pass any order and these petitioners be allowed to withdraw the petition.

9. Learned Advocate appearing on behalf of respondent No.1 submits that the petitioners are such persons, who are already facing Contempt proceedings and any misplaced sympathy shown to them would amount to permitting such litigants to play mischief with the majesty of law. He prays that these petitioners be saddled with heavy costs and the amount be donated to the treatment of poor patients in the Ghati hospital and the Government Cancer Hospital.

10. The Honourable Apex Court has delivered a judgment in the matter of Kishore Samrite Vs. State of UP and others, (2013) 2 SCC 398, and has observed in strong words that those litigants, who mislead the Court or resort to a mischievous act in the Court, should be deprived of relief, even if they may have a good case. The Honourable Apex Court has also held in the matter of Bhaskar Laxman Jadhav and Ors. Vs. Karamveer Kakasaheb Wagh Education Society and Ors. [AIR 2013 SC 523], that suppression of material facts in order to obtain orders from the Court should be dealt with sternly.

11. It is in the light of the above that this Writ Petition stands dismissed by imposing costs of Rs.25,000/- on each of the petitioners, which shall be deposited in this Court on/or before 14.6.2019, failing

which the said Act would be treated as being contemptuous, inasmuch as, the proceedings for causing recovery of arrears of land revenue shall be initiated to recover the said amount. Needless to state, the interim relief granted earlier stands vacated.

12. After the amount is deposited in this Court, Rs.25,000/- shall be transferred by the Registry of this Court to the Government Medical College and Hospital, Aurangabad either in cash or by Demand Draft (Demand Draft be drawn in the name of “**Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad**”) and Rs.25,000/- to the Shaskiya Karkarog Rugnalaya, Aurangabad (Demand Draft be drawn in the name of “**Civil Surgeon, Aurangabad**”), **through Medical Officer, High Court Dispensary, Aurangabad,**

13. Since the Writ Petition has been dismissed, the Contempt Petition be listed before the regular Court on 14.6.2019 in the Urgent Admissions Category, with liberty to the contempt petitioner to point out to the Court that the respondent / accused need to remain present in the Court as the charge has been framed.

(RAVINDRA V. GHUGE, J.)

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