

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10046 OF 2018
(Popat s/o Yesu Sanap and others Vs. Bhimabai Shivaji Kakad and others)

Mr.D.A.Bide, Advocate for the petitioners.
Mr.V.D.Hon, Sr.Advocate h/f Mr.A.V.Hon, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/03/2019

PER COURT :

1. The petitioners are the original plaintiffs in RCS No.241/2017. They are aggrieved by the judgment of the Appellate Court dated 22/06/2018, by which MCA No.99/2017 filed by the defendant/respondent No.1 herein, has been allowed and the interim order passed by the Trial Court dated 26/07/2017 in RCS No.241/2017, has been quashed and set aside.

2. The contention of the petitioners is that respondent No.2 Sakharam had purchased a particular share of water from a well, from Yesu, the father of the first petitioner, on 25/05/1981. Sakharam/respondent No.2 herein sold the said share of the water to respondent No.1 on 08/02/2017. Grievance of the plaintiffs is that

such sale of share of water as in 1981, is restricted to the extent of particular gat numbers. The share of water sold by Yesu to Sakharam is restricted to the extent of such gat numbers. Respondent No.1 herein has laid a pipeline and is using the water over a distance of about two kms. in a different gat number.

3. The learned Sr.Advocate appearing on behalf of respondent No.1 submits that this respondent has paid Rs.75,000/- to Sakharam while purchasing that share of water which Sakharam had purchased from Yesu. A pipeline is laid over a distance of only 2000 feet and the said water is being used. It is categorically stated on instructions that the first respondent would utilize the water only to the extent of the share purchased by her from Sakharam on 08/02/2017 by paying Rs.75,000/-. The pipeline has been laid at the costs of the first respondent.

4. I find that prayer clause A, which is the final prayer sought by the plaintiffs in the suit, is identical to the prayer put forth in the application for temporary injunction. The Trial Court had granted the said prayer which practically amounts to granting final relief at an interim stage. It is conveyed by the first respondent that because of the injunctory order passed by the Trial Court on 26/07/2017, his

sugarcane crop was destroyed. It is only by the impugned order dated 22/06/2018 that the Appellate Court has rectified the situation.

5. In my view, since the first respondent has purchased the share of the water from Sakharam to the extent that he held and as a statement is made that the said share of water would be utilized only to the extent that it was purchased from Sakharam, I do not find any reason to interfere in the impugned judgment.

6. I also find that the relief granted by the Trial Court preventing the first respondent from using the water in any form, is practically granting final relief without taking into account the irreparable harm, serious prejudice and manifest inconvenience that would be caused to the first respondent. I find that the Appellate Court has looked at the case pragmatically and the impugned judgment therefore cannot be termed as being perverse or erroneous.

7. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)

