

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2110/2015

Dattu | Sakhoba Dabde & Anr. ... Petitioners

V/s.

Mhadu Dnyanu Shinde & Ors. ... Respondents

Mr. Gajanan M. Savagave for the Petitioners
Mr. N. J. Patil I/b. Amey N. Patil for Respondent Nos.1A to 1C

CORAM: K.K. TATED, J.
DATED : JANUARY 23, 2019

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India the Petitioners challenge the order dated 11.12.2014 passed by the District Judge-1, Kolhapur in Misc. Appeal No.202/2013 granting injunction in favour of the Respondent – Plaintiff .

2 The learned counsel for the Petitioners submits that in the present proceedings, the Respondents – Plaintiffs have filed suit for permanent injunction restraining the Petitioner from causing any obstruction in respect of the suit property as mentioned in paragraph 1 of the plaint. In that suit the Respondents made an Application below Exhibit- 5 wherein the Trial Court has passed an *exparte* order granting ad-interim relief in favour of the Petitioner. Thereafter the Trial Court dismissed the Respondents' Application for injunction. Hence, the Respondents preferred Misc. Appeal No.202/2013 which was allowed by the appellate court on 11.12.2014, as under:

“1. *Appeal is hereby allowed with costs.*
2. *impugned order below Exhibit- 5 in Regular Civil Suit No. 62/2011 dated 11/12/2013 is hereby set aside and substituted as under:*

- (i) Application Exhibit- 5 is allowed.*
- (ii) Defendants or anybody else on their behalf are hereby temporarily restrained from causing any sort of obstruction and interference into peaceful possession of the Plaintiff over the suit land, till the disposal of suit.”*

3 The learned counsel for the Petitioners submits that the appellate court erred in coming to the conclusion that the Respondents proved their possession in respect of the suit property. He submits that as per his instructions, even as on today the Petitioners are in possession of the suit property. Hence, the impugned order is liable to be set aside by restoring the order passed by the Trial Court on 11.12.2013 below Exhibit- 5.

4 It is to be noted that in the present proceedings as soon as the suit filed by the Respondent they made an Application below Exhibit- 5 for injunction wherein an *exparte* injunction was granted on 08.04.2011. Thereafter as soon as the Trial Court rejected the Respondent - Plaintiff's Application for temporary injunction on 11.12.2013, they preferred Misc. Civil Appeal No.202/2013 which was allowed by the District Judge on 11.12.2014.

5 Considering the fact that injunction is already running

against the Petitioners since beginning, I do not find any reason to entertain the Writ Petition against the order passed by the appellate court granting injunction in favour of the Respondents.

6 In view of these facts, there is no question of entertaining the Writ Petition.

7 Hence, the following order is passed:

- a The Writ Petition stands rejected.
- b No order as to costs.
- c Hearing of Regular Civil Suit No.62/2011 is expedited.

(K. K. TATED, J.)