

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.577/2015

Tanaji Pundlik Zutal

... Petitioner

V/s.

Balu Hari Zutal

... Respondent

Mr. Sandeep S. Koregave for the Petitioner

CORAM: K.K. TATED, J.

DATED : JANUARY 3, 2019

P.C. :

1 Heard. None for the Respondent though duly served.

2 This Court, by order dated 19.01.2015 had issued Notice to the Respondent, returnable on 16.02.2015, stating that if time permits, the matter would stand disposed of at the stage of admission itself. In spite of that, today none appeared for the Respondent.

3 By this petition under Article 227 of the Constitution of India the Petitioner - Plaintiff challenges the order dated 01.01.2015 passed by the District Judge - 1, Jaisingpur in Misc. Civil Appeal No.31/2013 setting aside the order passed by the 2nd Jt. Civil Judge, Junior Division, Jaisingpur in Regular Civil Suit No. 22/2013 below Exhibit- 5.

4 In the present proceedings, initially the Petitioner had

made Application below Exhibit- 5 under Order 39 Rule 1 and section 151 of the Code of Civil Procedure, 1908, which was decided by the 2nd Jt. Civil Judge, Junior Division Jaisingpur after hearing both the sides, by order dated 15.03.2013 and restrained the Respondent – Defendant from alienating the suit property as described in paragraph 1 of the plaint till final disposal of the suit. The operative part of the order reads thus:

- “1. *Application allowed.*
2. *The Defendant is hereby restrained from alienating the suit property to third person till the final disposal of the suit.*
3. *The Defendants is further restrained from causing any obstruction to the Plaintiff's possession over suit property.*
4. *Costs in cause.*

Pronounced in an open court.”

5 Being aggrieved by the said order, the Respondent – Defendant preferred Misc. Appeal No.31/2013 which was allowed by the appellate court on 01.01.2015.

6 This court, by order dated 19.01.2015 directed the parties to maintain *status quo* as on that date and same is continued till today. It is to be noted that the suit is of the year 2013 and pending for hearing on merits. The learned counsel for the Petitioner, across the Bar makes a statement that the Plaintiff's evidence has already been commenced. He further submits that as the trial is already commenced in Regular Civil Suit No. 22/2013, this Hon'ble Court be pleased to continue the order dated 15.03.2013 till hearing and final disposal of the said suit.

He further submits that in any case, as on today, the Petitioner is in possession of the suit property. In support of his contention, the learned counsel for the Petitioner relies on the judgment of the Apex Court in the matter of ***Ravi Prakash Agarwal & Ors. Vs. Rajesh Prasad Agarwal & Ors. 2008 DGLS (SC) 331.***

7 Considering the fact that in spite of service, none appeared for the Respondent and the trial has already been commenced in the Trial Court, I am of the opinion that the petition can be disposed of with following directions.

8 Hence, following order is passed

- a. The Writ Petition is partly allowed.
- b. The Civil Judge, Junior Division, Jaisingpur to decide Regular Civil Suit No. 22/2013 as early as possible but in any case on or before 31.12.2019.
- c. Order dated 01.01.2015 passed by the learned District Judge, Jaisingpur in Misc. Civil Appeal No.31/2013 is set aside.
- d. Pending the hearing and final disposal of Regular Civil Suit No. 22/2013, the order dated 15.03.2013 below Exhibit- 5 in Regular Civil Suit No. 22/2013 to continue.
- e. No order as to costs.

(K. K. TATED, J.)