

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7842 OF 2016

Ramdas J. Bankhele .. Petitioner
vs.
Prabhakar J. Bankhele and anr. .. Respondents

Mr. T.D. Deshmukh for the Petitioner.
Mr. G.T. Kanchanpurkar for Respondent Nos.1 and 2.

CORAM : M. S. SONAK, J.
DATE : 11 APRIL 2019.

ORAL JUDGMENT. :-

1] Heard Mr. T.D. Deshmukh for the petitioner and
Mr.G.T. Kanchanpurkar for the respondents.

2] Rule. With the consent of and at the request of learned
counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 25th
April 2016 by which learned Appeal Judge allowed the appeal
instituted by the respondents and set aside the order dated
4th September 2015 made by learned Trial Judge in Regular
Civil Suit No.144 of 2013. In effect, the impugned order,
vacates the injunction granted by learned Trial Judge.

4] Mr. Deshmukh, learned counsel for the petitioner, submits that there was absolutely no infirmity in the order made by learned Trial Court granting temporary injunction in favour of the petitioner herein. Yet, the Appeal Court, on improper premises, vacated the injunction order. He submits that the material on record establishes that the suit property stands in the name of the petitioner in the revenue records. He therefore submits that *prima facie* case was clearly made out by the petitioner and even the balance of convenience was in favour of protecting the petitioner's possession. He therefore, submits that the Appeal Court order warrants interference.

5] Mr. Kanchanpurkar, learned counsel for the respondents, defends the impugned order on the basis of reasoning reflected therein.

6] The Appeal Court, has basically held that the respondents are the brothers/nephews of the petitioner and the suit property is a *coparcener* property. The Appeal Court has therefore held that one *coparcener*, may not, by means of

injunction, restrain the other *coparcerner* from enjoying the property. The impugned order is in operation since April 2016, since, there was no ad-interim relief granted by this Court. This means that the position as it prevails now, is continued since April 2016.

7] In the aforesaid circumstances, interests of justice will be met if directions are issued to learned Trial Judge to dispose of the suit, which incidentally was instituted in the year 2013, as expeditiously as possible and in any case on or before 31st March 2020. Since learned counsel for the parties have assured this Court that the parties will cooperate with learned Trial Judge in expeditious disposal of the suit, directions are issued for disposal of R.C.S. No. 144 of 2013 as expeditiously as possible and in any case before 31st March 2020.

8] Accordingly, petition is disposed of with the aforesaid directions without interfering with the impugned order. However, it is made clear that in disposing of the suit on merits, learned Trial Judge should not be influenced by any

of the observations in the orders dated 4th September 2015 and 25th April 2016 and the present order. The suit will have to be disposed of on its own merits and in accordance with law by taking into consideration the evidence which the parties will present in the suit.

9] All contentions of all parties are therefore, expressly kept open.

10] Rule is disposed of the aforesaid terms. There shall be no order as to costs.

11] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)