

WRIT PETITION NO. 12289 OF 2015

- [illegible]

Ms. Divya Parab i/b R.N. Gite for respondent Nos.2 to 5.

CORAM : N.J. JAMADAR, J.

DATE : 17TH SEPTEMBER 2019

ORAL JUDGMENT :

- 1. Rule.** Rule made returnable forthwith and heard finally with the consent of the learned counsel for the petitioners and the learned counsel for the respondent Nos.2 to 5.

2. The challenge in this petition under Article 227 of the Constitution of India is to the order of injunction passed by the learned Joint Civil Judge, Junior Division, Yeola on 15th March 2013 in Regular Civil Suit No.352 of 2012, thereby restraining the petitioners-original defendants from alienating suit property in any manner, and the order passed by the learned District Judge-2, Niphad, Dist.Nashik in Miscellaneous Civil Appeal No.32 of 2013 on 17th June 2015, whereby the order passed by the learned Joint Civil Judge was confirmed and the appeal came to be dismissed.

3. The background facts leading to this petition can be summarized as under :-

(i) It is the claim of the respondents/plaintiffs that the property bearing C.T.S. No.1051 admeasuring 34.30 sq. mtrs. situated at Pahad Galli, Taluka Yeola, Dist. Nashik including the construction standing thereon (hereinafter referred to as 'the suit property') is originally owned by Maratha Community. One Dattu Vithoba Hingde was a Panch and leader of Maratha Community and his name came to be mutated to the records of rights of the suit land in the capacity of Pudhari. After demise of the Vithoba Khandu Hingde on 3rd May 1928, the property came to be mutated in

the name of his son Dattatray, in the said capacity. After demise of Dattatraya, the property came to be mutated in the name of the petitioner-Gorakhnath in the year 1965. Though the property has been mutated in the name of Gorakhnath and his father and grandfather, yet the title of the property vested in Maratha Community as the real owner of the suit property. The plaintiffs-respondents claiming to be the members of Maratha Community instituted the suit for perpetual injunction. In the said suit, an application for temporary injunction (Exh.5) came to be filed seeking injunction against the defendants/petitioners from erecting new construction, parting with the things standing thereon, and attached to the suit property or causing damage to the suit property in any manner and also for restraining the defendants from creating third party rights in the suit property.

(ii) The defendants-petitioners resisted the application. It was also asserted that the defendants were the absolute owners of the suit property.

(iii) The learned Civil Judge was persuaded to hold that though the plaintiffs have not succeeded in establishing that they are the members of Maratha Community, yet, the source of the ownership of the

defendants was not clear and there was a mutation entry to show that the suit property was initially mutated in the name of the father of the defendant No.1 as a leader of Maratha community. Thus, the trial court modulated the relief and restrained the defendants from alienating the suit property till the disposal of the suit.

(iv) The petitioners carried the matter in appeal by filing Miscellaneous Civil Appeal No.53 of 2013. The learned District Judge, by the impugned judgment and order dated 17th June 2015, concurred with the findings recorded by the trial court and dismissed the appeal. Being aggrieved, the petitioners invoked the writ jurisdiction of this Court.

4. Heard Shri Siddhartha R. Ronghe, the learned counsel for the petitioners and Ms.Divya Parab, the learned counsel for the respondent Nos.2 to 5.

5. Shri Ronghe, the learned counsel for the petitioners would urge that the trial court and the appellate court have committed manifest error in passing an order of injunction, despite having recorded a finding that the plaintiffs have failed to establish that they are members/part of Maratha Community or have any interest in the suit property. It was further

submitted that the trial Court as well as the appellate Court did cast burden upon the defendants to establish their title and thereby misdirected themselves in passing the order of restraintment.

6. Evidently, there is material on record to indicate that initially the suit property was mutated in the name of Vithoba Raghu Hingde as Pudhari of Maratha Community. After the demise of Vithoba, the suit property came to be mutated in the name of his son Dattu, the father of the defendant No.1. In this backdrop, the trial Court and the appellate Court were persuaded to record a *prima facie* finding that there is cloud of doubt in the title of the defendants over the suit property.

7. The learned counsel for the petitioners would, however, urge that the plaintiffs/respondents were enjoined to establish their interest in the suit property. In the absence thereof, injunction could not have been granted in favour of the plaintiffs.

8. The aforesaid submission is required to be appreciated in the backdrop of the fact that the substance of the claim of the plaintiffs is that the suit property was allegedly given in trust to the defendants. In this view of the matter, the reliance placed by the counsel for the petitioners on the judgments in the case of ***Dalpat Kumar & Anr. Vs. Prahlad Singh & Ors.***¹ and ***Premji Ratansey Vs. Union of India***² does not appear to be

1 AIR 1993 SC 276

2 1994 SCC (5) 547

well founded. The proposition in the aforesaid judgments of the Supreme Court may not govern the facts of the instant case with equal force.

9. Even otherwise, the trial Court has exercised its discretion to restrict the injunctive relief to the extent of restraining the defendants-petitioners from alienating the suit property during the pendency of the suit. In exercise of the extraordinary jurisdiction under Article 227 of the Constitution of India, no interference is warranted in exercise of the said discretion, which is neither perverse nor unreasonable.

10. The learned counsel for the petitioners expressed an apprehension that the learned Civil Judge as well as the learned District Judge have made certain observations in the impugned order which may prejudice the defence of the defendants at the trial. It is trite that the observations made by the Court while deciding an application for temporary injunction are in the context of determination of the interim relief and those observations do not bind the Court at the time of final adjudication.

11. With the aforesaid clarification, the petition stands dismissed.

No costs. Rule stands discharged.

[N.J. JAMADAR, J.]

