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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11103 OF 2017

WITH

CIVI APPLICATION NO.773 OF 2019

Gopal Bemtya Thakare & Ors.	..Petitioners.
V/s.	
Sitaram Babu Thakare	..Respondent.

Mrs.Gauri Godse for the petitioners.

Mr.Sandesh Patil with Chitan Y.Shah for the respondent.

CORAM : M.S.SONAK, J.

DATE : APRIL 1, 2019

ORAL JUDGMENT

Heard Mrs.Godse, learned counsel for the petitioners and Mr.Patil, learned counsel for the respondent.

2. Challenge in this petition is to the order dated September 15, 2017 by which learned Appeal Court allowed the respondent's appeal and set aside the order dated March 15, 2017 made by the learned trial Judge injuncting the respondent from interfering with the suit property.

3. Mrs.Godse, learned counsel for the petitioners submits that

the Appeal Court has misconstrued the revenue extracts and incorrectly held that it is the respondent who is in possession of the suit property. She submits that M.E. No.946 dated January 3, 1987 could never be construed as seaparate and respondent continued in possession of the said property since the year 1987. She submits that this entry relates until the year 1987. She further points out that M.E.No.533 was already cancelled and the Appeal Court has failed to appreciate the impact of such cancellation. He submits that there is a dispute that the petitioner are title holders / owners in respect of the suit property. She submits that the respondent has placed no material on record. She submits that the Appeal Court exceeded jurisdiction in interfering with the well reasoned order made by the learned trial Court.

4. Mr.Patil, learned counsel for respondent defends the impugned order on the reasoning reflected therein. He points out that in this case certification of the relevant M.E.No.946 was in fact suppressed by the petitioner. For these reasons, Mr. Patil submits that this petition may be dismissed.

5. The rival contentions now fall for my determination.

6. The Appeal Court has within its jurisdiction analysed the M.Es. as well as other materials on record and thereafter recorded a *prima facie* finding that it is the respondent who is in possession of the suit property. The Appeal Court has relied upon M.E. No.946 which is

clearly in favour of the respondent and atleast *prima facie* indicates that it is the respondent who is cultivating the suit property. The Appeal Court has also referred to M.E.Nos.1139 and 885A which mutation entries are made almost 20 to 30 years after the demise of Dahu. The Appeal Court has correctly observed that even these entries relate only to ownership and not in respect of cultivation. Thus, the petitioners were really not in possession / cultivation of the suit property. This reasoning proceeds on the basis that they would be insisting upon the relevant entries being made in cultivation column.

7. The record also indicates that the petitioners while relying upon several M.E.s, failed to disclose M.E. No.946 which was relevant to the matter.

8. This is really not a case that the Appeal Court has acceded jurisdiction or that it has applied some incorrect principles. The appeal Court based upon the appreciation of evidence on record has come to a *prima facie* findings that it is the respondent who is in possession of the suit property. There is no unreasonableness in exercise of discretion involved.

9. Accordingly, there is no case made out to interfere with the impugned order.

10. At this stage, Mrs.Godse, learned counsel for the petitioners points out that the petitioners will establish the issue of their possession

by leading appropriate evidence in the course of trial. She submits that it may, therefore, be clarified that none of the observations in the impugned order or this order be taken into consideration while deciding the suit on its own merits. She also submits that in the interest of justice, direction be issued to both the parties to maintain status quo in so far as M.E.s are concerned so that there is no further complication during the pendency of the suit.

11. According to me, there is absolutely no difficulty in clarification that the observations in the impugned orders made by the trial Judge, the Appeal Court or this Court at the stage of decision the application for interim relief, need not influence the learned trial Judge while deciding the suit on merits. Accordingly, the said clarification is expressly issued. Further, according to me, interest of both the parties will be served, if both the parties are directed to maintain status quo in respect of the M.E.s, during the pendency of the suit. It is so directed.

12. Accordingly, the challenge to the impugned order is dismissed. However, both the parties are directed to maintain status quo in relation to the M.E.s. The findings recorded by the learned Appeal Court that respondent is in *prima facie* possession of the suit property is accepted. No doubt, only as a *prima facie* finding and not as a final finding.

13. The petition is disposed of in the above terms. There shall

be no order as to costs.

14. In view of disposal of the petition, the civil application does not survive and the same is also disposed of.

15. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)