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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4720 OF 2016

Shivaji Vithoba Bhosale & anr. ..Petitioners
vs.
Satish Mahadev Kulkarni & ors. ..Respondents
....
Shri Rahul S. Kate for petitioners.
Shri S.R. Moray I/b. Shri V.S. Talkute for respondents.

....
CORAM : M.S.KARNIK, J.

DATE : 30th AUGUST, 2019

P.C. :

Heard learned counsel for the petitioners.

2. The petitioners are the original defendants. The respondents – original plaintiffs had filed a suit for injunction restraining the defendants from interfering with their possession over the suit property. The respondents filed an application Exhibit 5 for temporary injunction. The trial Court by an order dated 4/2/2014 rejected the application Exhibit 5.

3. In Appeal filed by the respondents, the Appellate Court set aside the order passed by the trial Court below Exhibit 5. The Appeal was allowed and the temporary injunction restraining the present petitioners – original defendants from obstructing the possession of the plaintiffs over the suit property till the decision of the suit was granted.

4. Learned counsel for the petitioners assailing the order of the Appellate Court invited my attention to the written statement filed by the defendants. He pointed out that in the written statement, a specific plea is taken that the defendants are cultivating the suit property and to support the same it is stated that even the Tahsildar at Chandgad vide order dated 26/6/1997 had confirmed the possession of the defendants over the suit property. Learned counsel would therefore submit that the Appellate Court committed an error while observing in paragraph 12 that “the date on which they come into possession is also not pleaded by them.”

5. Learned counsel for the respondents on the other hand supported the impugned order.

6. I have gone through the impugned order. The Appellate Court has taken into consideration the 7/12 extract which shows the name of the plaintiffs in the owner's column. In the opinion of the Appellate Court the revenue authorities did not follow the procedure while entering the name of the cultivator to the suit property by filling form No.14 and the said entries do not disclose lawful possession under lawful capacity of the defendants. It is in these circumstances that the Appellate Court allowed the Appeal.

7. The order passed by the Appellate Court is in operation since 28/7/2017. Considering the over all facts, I am not inclined to interfere with the order passed by the Appellate Court. The view of the Appellate Court cannot be said to be erroneous so as to warrant interference. Suffice it to observe that the suit is of the year 2013 and the trial Court can be requested to expedite the hearing of the suit. Hence the

following order.

O R D E R

i) The Petition is dismissed with no order as to costs.

ii) The trial Court is requested to expedite the hearing of the suit and decide the same expeditiously, preferably within a period of 18 months from today.

iii) Needless to mention that the observations made by the Appellate Court are limited to deciding the application Exhibit 5 and shall not come in the way of the trial Court and shall not be influenced by the observations while deciding the suit on its own merits.

8. With these observations, the Petition is disposed of.

(M.S.KARNIK, J.)