

Anand

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

WRIT PETITION NO. 14138 OF 2018

Gangabai Shankar Malge & ors. .Petitioners

Vs.

Sakhubai Amogsiddha Malge & ors. .Respondents

Mr. Ashutosh M. Kulkarni, Advocate, for the Petitioners

Mr. Prasad P. Kulkarni, Advocate, for the Respondent No. 2

CORAM : REVATI MOHITE DERE, J.

DATE : 11.12.2019

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners have impugned the order dated 16.12.2017 passed by the learned 4th Joint Civil Judge, Junior Division, Solapur below Exh. 05 in Regular Civil Suit No. 822 of 2017, by which the Petitioners' (Original Plaintiffs') Application for temporary injunction was dis-allowed as well as the order dated 13.08.2018, by which the learned District Judge – 5, Solapur was pleased to confirm the order passed by the trial Court below Exh. 05, by dismissing the Petitioners' Civil Misc. Appeal No. 8 of 2018.

3. Perused the papers. The Petitioners are the original Plaintiffs, who have filed a suit in the Court of the learned 4th Joint

Civil Judge, Junior Division, Solapur for declaration and injunction. The Respondent Nos. 1 & 2 are the Original Defendant Nos. 1 & 2 in the said suit. According to the learned counsel for the Petitioners, since the Petitioners' ancestors had constructed the Khandoba Temple, they had a right to perform pooja of Lord - Khandoba. Whereas, according to the learned counsel for the Respondent No. 2, the Petitioners had no right to perform the pooja and that the Petitioners were not concerned with the property in question. Learned counsel for the Respondent No. 2 submits that the temple was constructed by their ancestors and that the ancestors of the Petitioners and the Respondents are not common. It appears that several suits have been filed by and between the parties. There is an R. C. S. No. 985 of 1989 filed by the Respondent No. 2 – Rukminibai @ Shantabai as against Shankar Malge and Siddhappa which has been decreed on 21.02.1991. The said decree is in favour of the Respondents (Original Defendants) and the Appeal against the said decree is pending before the Appellate Court. The Appellate Court has not stayed the decree passed in the said proceedings i. e. R. C. S. No. 985 of 1989. There is another suit, being R. C. S. No. 374 of 1991, with regard to the suit properties filed by the Defendant No. 2 - Rukminibai @ Shantabai, also against Shankar Malge and others. The said suit has been decreed on 15.09.1997 and the Appeal against the said decree is pending before the Appellate Court. There is another Spl. C. S. No. 19 of 1992 filed by the Petitioners' ancestors for partition which was dismissed by the trial

Court by recording a finding that the Petitioners' ancestors have no share in the property. The trial Court and the Appellate Court having in detail considered the material on record before rejecting the Petitioners' Application (Exh. 5) / Appeal for temporary injunction by a reasoned order. Grant of injunction is a discretionary relief. The material on record does not show that the impugned orders are either illegal or perverse. Both the lower Courts have rightly come to a conclusion that the Petitioners are not entitled to temporary injunction and no infirmity can be found in the said orders.

4. Accordingly, the Petition is dismissed. However, the suit is expedited. The trial Court to decide the suit on its own merits, in accordance with law.

(REVATI MOHITE DERE, J.)