

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2865 OF 2017
IN
WRIT PETITION NO. 2999 OF 2017

Smt. Pratima Harishchandra alias
Hari Kharat

.. Applicant/Petitioner

Vs.

Thakubai Sitaram Jagtap
(since deceased) through Lr's.
1.Maya Prakash kakade and Ors.

.. Respondents

Mr. R.D. Soni a/w Mr. Sujay Gawade a/w Ms. Anita Dubey I/b
Shree & Co. for applicant.
Mr. T.D. Deshmukh for respondent Nos. 1 and 5

CORAM : K.K. TATED, J.

DATE : 10 JANUARY 2019.

P.C:-

. Heard learned Counsel for the parties.

2. Though the Civil Application was duly served on respondent and they appeared before this Court since 2017, they failed and neglected to file their affidavit in reply.

3. By this Civil Application, applicant/original plaintiff is seeking to restrain the respondent from disturbing their possession in respect of suit property till the hearing and final disposal of the writ petition. Learned Counsel submits that during the pendency of the present writ petition, the respondent altered

the revenue record by following due process of law. He submits that applicant is in possession of the suit property for last more than 80 years. In support of his contention, he relies on paragraph 9 of the civil application which reads thus :

“9. The Applicant further states that she is in possession of the said property and cultivating the same. The Applicant states that the said property is an ancestral property of the Applicant/Plaintiff which is in possession of the Applicant/Plaintiff and her predecessors since last 80 years and that after the death of the Applicant's father, the Applicant herself is looking after the said property and cultivating the same. The Applicant states that considering the fact that the Applicant is a woman and looking after and cultivating the suit property, she proposes Defendant No.5 i.e. Ashok Sitaram Jagtap with the aid of certain unlawful elements tried to disturb possession of the Applicant on 10.11.2017 and therefore, the Applicant immediately filed a complaint to the Otor Police Station on the same day. Hereto annexed and marked as **Exhibit “C”** is a copy of the said complaint filed by the Applicant with Otor Police Station.”

4. Learned Counsel for the applicant submits that if applicant's possession is disturbed in respect of suit property during the pendency of the present writ petition, nothing survives in the present writ petition. Hence, Civil Application be allowed in terms of prayer clause (a).

5. On the other hand learned Counsel for the respondent vehemently opposed the present Civil Application. He submits that in the present writ petition, applicant/original plaintiff is

challenging the order of abetment in the suit. He submits that unless and until the said order is set aside, the applicant is not entitled to any relief in the present Civil Application. He further submits that respondent is in possession of the suit property. Therefore, there is no question of allowing present Civil Application in terms of prayer clause (a) and same is required to be dismissed with cost.

6. I heard both the sides at length. Though the Civil Application was duly served on the respondent, there is no affidavit in reply.

7. The applicant specifically made a statement in paragraph 9 of Civil Application that she is in possession of the suit property for last more than 80 years. During the pendency of the present writ petition, if her possession is disturbed then nothing will survive in the present writ petition in which the applicant has challenged the order passed by the trial Court about the abetment of the suit.

8. Considering the facts and circumstances of the present case, I am of the opinion that applicant has made out case for allowing this Civil Application in terms of prayer clause (a). Hence, following order :

a) Civil Application is allowed in terms of prayer clause (a) which reads thus :

“a) That pending the hearing and final disposal of the aforesaid writ petition, being

Writ Petition No.2999 of 2017, the Respondents/proposed Defendants, their agents, servants and representatives be restrained by an order and injunction of this Hon'ble Court from in manner disturbing the Applicant/Plaintiff from peacefully enjoying the possession of the suit property and further restraining the Respondents/proposed Defendant, their agents, servants and representatives from dispossessing the Applicant/Plaintiff from the suit property as described in the Schedule to the plaint.”

- b) Civil Application stands disposed of.
- c) At this stage, learned Counsel appearing on behalf of respondent seeks stay of this order. Considering the facts and circumstances of the present case and particular avernments made in paragraph 9 of the Civil Application and as there is no affidavit in reply filed by respondent, I do not find any substance in the oral request made by the learned Counsel for the respondent. Hence, oral request for stay of this order is rejected.

(K.K.TATED, J.)