

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

WRIT PETITION NO.1649 OF 2018

Master Vishal Vijay Patil & Anr. ... Petitioners
Vs.
Gunvant Yashwant Patil ... Respondent

.....

Mr. Rajaram V. Bansode for the Petitioners.
Mr. Sarthak Diwan I/b. Mr. Ashutosh M. Kulkarni for the Respondent.

.....

CORAM : M. S. KARNIK, J.

DATE : 18th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioners and learned counsel for the respondent.

2. The petitioners are the original plaintiffs are challenging the order dated 13.9.2017 passed by the Appellate Court dismissing the Appeal thereby confirming the order passed by the Trial Court in the Exhibit 5 application filed by the plaintiffs for injunction. The petitioners-original plaintiffs have filed suit for permanent injunction against defendant on the ground that the plaintiffs are owners of suit land and they are in peaceful

possession and enjoyment of the suit land. It is the case of the defendant that Hari Laxman Joshi has no concern with suit land. It is the case of the defendant that suit land is owned by State Government and Grampanchayat, Waiphale is cultivating and managing the suit land.

3. Learned counsel for the petitioners submitted that the petitioners are claiming under the sale deed. Appropriate permission has been obtained from the Tahasildar. He states that the plaintiffs are in possession of the suit land. According to him, the respondent-original defendant has no concern with the suit land. In the submission of learned counsel for the petitioners if at all any defence is to be taken, such a defence can only be taken by the State Government or by Grampanchayat but not by the respondent. The entire defence of the respondent is that the land is owned by the State Government and Grampanchayat, Waiphale is cultivating and managing the suit land. Learned counsel for the petitioners therefore submits that though the Trial Court held that Hari Laxman Joshi and Hari Bhataji is one and the same person, however, the Appellate Court has proceeded on altogether

different footing and considered the question from the point of view that the question to be decided is whether Hari Bhataji and Hari Laxman Joshi is one and the same person.

4. Learned counsel for the respondent on the other hand supported the order passed. I have gone through the order passed by the Courts below. Both the Courts below have concurrently found that the plaintiffs are not in possession of the suit land. It is the case of the respondent that the land in question is in possession of Grampanchayat, Waiphale which is cultivating and managing the suit land.

5. Be that as it may, having gone through the concurrent findings passed by the Courts below, I see no reason to interfere with the exercise of the discretion on the part of the Courts below while rejecting the application Exhibit 5. It is however made clear that the observations made in the said orders are limited for deciding application Exhibit 5. The Trial Court will obviously proceed with the suit on its own merits and on the basis of evidence on record without being influenced by any of the observations made in the impugned order. Considering the

controversy and also taking into consideration that the suit is of the year 2014, the Trial Court is requested to expedite the suit and decide the same preferably within a period of one year from today.

6. With these observations, the petition is rejected with no order as to costs.

(M. S. KARNIK, J.)