

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1149/2018

(ABDUL SHAKIL ABDUL HAMID & OTHERS VERSUS SAYYAD AZAM SAYYAD KASAM & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.A. Babrekar, counsel for petitioners.
Ms D.S. Sapkal, Advocate with Shri A.S. Kilor, counsel for R-1 to 5.
Ms A.R. Kulkarni, A.G.P. for R-6.

CORAM : A.S. CHANDURKAR, J.

DATE : AUGUST 07, 2019.

The challenge raised in the present writ petition is to the order passed by the Appellate Court dismissing the miscellaneous appeal that was filed by the original plaintiffs who were aggrieved by the order passed by the trial Court below Exhibit 5 by which the prayer for interim injunction came to be rejected.

The petitioners are the original plaintiffs who have filed suit for partition and separate possession. It is their case that the properties belong to one Harun Bee and as her legal heirs, the plaintiffs are entitled to claim a share therein. The defendant no.1 is said to be the brother of said Harun Bee while the defendant nos.3 and 4 are his sons. It is the further case of the plaintiffs that some of the properties were acquired by the respondent no.6 and a prayer was also made that the amount of compensation on account of such acquisition be not paid to the defendants. The defendants relied upon the deed of partition dated 17.07.2008 and opposed the prayer as made in the plaint.

The trial Court came to the *prima-facie* conclusion that in view of the partition-deed dated 17.07.2008, the plaintiffs were

not entitled to grant of interim injunction. That order has been confirmed by the Appellate Court.

Shri C.A. Babrekar, learned counsel for the petitioners submitted that as the deed of partition was undated the trial Court ought not to have relied upon the same for coming to the conclusion that such partition had been effected on 17.07.2008. He further submitted that the properties at Serial Numbers E and F had been acquired and the amount of compensation was received by the defendant no.1. The defendants should be directed to secure the share of the plaintiffs to the extent of 1/3rd amount during pendency of the suit. He therefore submitted that the Courts ought to have granted the injunction as prayed for.

On the other hand Ms D.S. Sapkal, learned counsel for the respondent nos.1 to 5 and Ms A.R. Kulkarni, learned Assistant Government Pleader for the respondent no.6 supported the impugned orders. It was submitted that the trial Court by taking a *prima-facie* view of the matter has found that the partition-deed was effected on 17.07.2008 and the parties had acted upon the same. This finding was confirmed by the Appellate Court and the same did not require any interference. The mutation entries on the basis of that partition were also effected. Hence, no interference was called for with the impugned orders.

On hearing the learned counsel for the parties, it is seen that both the Courts have *prima-facie* observed that in view of the partition effected in the year 2008, the mutation entries had been changed. There was no objection raised to those entries by the plaintiffs for a considerable time. The amount of compensation has been disbursed to the defendant no.1 on 16.08.2017 and on 06.02.2018. Be that as it may, the suit is stated to be at the stage of recording evidence. The order of the trial Court is dated

16.12.2017 and since that date there is no interim order operating. Hence, instead of recording any *prima-facie* finding in favour of either of the parties, it would be in the interest of justice to direct expeditious disposal of the suit.

Accordingly, the trial Court is directed to decide the proceedings in Special Civil Suit No.152 of 2017 expeditiously and preferably by the end of December-2019. The trial Court shall not be influenced by any observations made in the order passed below Exhibit 5 or by the Appellate Court in the miscellaneous appeal. All contentions of the parties are kept open.

With these observations, the writ petition is disposed of. C.A.W. No.1335 of 2018 is also disposed of.

JUDGE

APTE