

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3166 OF 2016

Migelmarty w/o Abel Ignatius Anthony
(dead) by L.Rs

1. Able Ignatius Anthony and ors. ... Petitioners.

-vs-

D'Sales s/o J. Francis ... Respondent.

WITH
WRIT PETITION NO.3135 OF 2016

Migelmarty w/o Abel Ignatius Anthony
(dead) by L.Rs

1. Able Ignatius Anthony and ors. ... Petitioners.

-vs-

Morris @ Earnest s/o J. Francis ... Respondent.

Shri P. S. Sadavarte, Advocate for petitioners.

Shri R. T. Anthony, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : June 24, 2019

P.C.

The challenge in these writ petitions is to the order passed by the trial Court rejecting the applications filed by the plaintiffs calling upon the defendants to deposit occupation charges.

The plaintiffs have claimed possession of the suit property on the basis of Will dated 28/06/2006 executed in favour of the plaintiffs. According to the plaintiffs the defendants without any right, title and interest are

continuing in occupation of the suit premises and hence they should be put to terms by directing them to deposit occupation charges during pendency of the suit. The trial Court rejected the said applications on the ground that the title of the plaintiffs is yet to be decided and hence applications are premature in nature.

2. Shri P. S. Sadavarte, learned counsel for the petitioners submits that the trial Court without considering the case of the plaintiffs and ignoring the fact that a Will had been executed in favour of the plaintiffs proceeded to reject the said applications. He submits that even if the plaintiffs succeed in the suit, the plaintiffs would not be in possession to recover damages from the defendants on account of their illegal occupation. Hence, the defendants should be directed to deposit occupation charges.

3. Shri R. T. Anthony, learned counsel for the respondents supported the impugned orders and submitted that the entitlement of the plaintiffs is yet to be decided. The application as moved was premature. Since the trial Court is recording evidence in the matter, the proceedings in the suits can be expedited so that the apprehension of the petitioners is taken care of.

4. In the plaint it is the case of the plaintiffs that pursuant to the Will dated 28/06/2006 the suit property was bequeathed in favour of the

plaintiffs. On that basis suits for possession have been filed. The question whether the defendants are liable to be evicted from the suit property as their possession is illegal is a matter to be decided by the trial Court. At this stage I do not find that the trial Court committed any error in refusing to grant the relief as prayed for in the applications. The apprehension of the plaintiffs that the defendants were delaying the matter can be taken care of by directing the trial Court to decide the suits within a stipulated period.

5. Accordingly, the writ petitions are disposed of by directing the trial Court to decide the R.C.S. Nos.671/2010 and 672/2010 on their own merits by the end of December 2019.

The observations made in the impugned orders will not come in the way of the plaintiffs when the suits are finally decided. All points are kept open.

The Writ Petitions are disposed of in aforesaid terms with no order as to costs.

JUDGE