

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 WRIT PETITION NO. 4713 OF 2005

1. Sukhadeo Namdeo Patil,
Age : 65 years, Occu. Agriculture,
R/o. Ghosala, Tal. Soyegaon,
Dist. Aurangabad.
2. Onkar s/o Namdeo Patil,
Age : 55 years, Occu : Agriculture,
Dist. Aurangabad. ... Petitioners

Versus

Chintaman Namdeo Patil,
Age : 67 years, Occu. Agriculture,
R/o. Ghosala, Tal. Soyegaon,
Dist. Aurangabad. ... Respondent

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Advocate for Petitioners : Mr. D. P. Palodkar
Advocate for Respondent-sole : Mr. P. P. Patni h/f Mr. P. F. Patni

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CORAM : V. K. JADHAV, J.
DATED : 23rd JANUARY, 2020

JUDGMENT:-

1. Heard both sides.
2. The petitioners are the original defendants. The respondent/
plaintiff had instituted a suit bearing Regular Civil Suit No. 14 of
2001 for declaration and a decree of perpetual injunction and the
petitioners/original defendants had also submitted a counter claim.

By the judgment and decree dated 15.12.2004 in Regular Civil Suit No. 14 of 2001, the learned Civil Judge, Junior Division, Soyegaon dismissed the suit so also dismissed the counter claim. Being aggrieved by the same, the respondent/plaintiff has preferred the appeal bearing Regular Civil Appeal No. 43 of 2005. During pendency of the said appeal, the Additional District Judge has passed the order directing the parties to maintain *status quo*. The respondent/plaintiff has thus filed an application bearing MARJI No. 8 of 2005 requesting for police aid to protect his possession. The petitioners/defendants have strongly resisted the said application. The trial court, by order dated 24.06.2005 below Exhibit 1 in MARJI No. 8 of 2005, though rejected the application, directed the present petitioners not to obstruct or interfere in the possession of the respondent/plaintiff. Hence this Writ petition.

3. Learned counsel for the petitioners/original defendants submits that there was no reason for the trial court to entertain MARJI No. 8 of 2005 when the appellate court has seized with the matter. Even if any order is passed by the appellate court in the pending appeal, the respondent/plaintiff should have filed application before the appellate court. Instead, the

respondent/plaintiff has filed the application bearing MARJI No. 8 of 2005 and despite rejection of the said application, the trial court has directed the present petitioners not to obstruct or interfere in the possession of the respondent/plaintiff. Learned counsel submits that though the appellate court has directed the parties to maintain *status quo*, nowhere the appellate court has held that the respondent/plaintiff is in possession of the suit property. Learned counsel submits that now Second Appeal No. 332 of 2007 is pending before this Court. Learned counsel submits that even after this Court has stayed the effect of the order passed below Exhibit 1 in MARJI No. 8 of 2005 in the present Writ Petition, the same court has again passed a similar order which is challenged in Writ Petition 6744 of 2005. By order dated 07.01.2008 this Court (Coram : R. M. Savant, J.) has quashed and set aside the said order.

4. Learned counsel for the respondent/original plaintiff submits that since the appellate court has directed the parties to maintain *status quo*, the respondent/plaintiff, when the petitioners/defendants have obstructed his possession over the suit land, filed the application bearing MARJI No. 8 of 2005 before the trial court

seeking police aid. Though the trial court has refused to grant police aid, however, directed the other side as not to obstruct or interfere in his possession. The trial court has rightly passed the order. No interference is required. This Writ Petition is liable to be dismissed.

5. On going through the impugned order and annexures, it appears that the learned Civil Judge, Junior Division, Soyegaon, by the judgment and decree dated 15.12.2004 dismissed the suit and also dismissed the counter claim filed by the petitioners/defendants. Being aggrieved by the same, the respondent/plaintiff preferred an appeal before the District Court and it further appears that during pendency of the said appeal, learned Additional District Judge has directed the parties to maintain *status quo*. The appellate court has seized with the matter and it was for the respondent/plaintiff to file an appropriate application in the pending appeal if at all there was breach of the order passed by the appellate court during pendency of the appeal directing the parties to maintain status quo. In stead of that, the respondent/plaintiff filed the application MARJI No. 8 of 2005 seeking police aid before the trial court and it is pertinent that the trial court has not only

entertained the said application, but directed the petitioners/defendants not to obstruct the possession of the respondent/plaintiff over the suit property. It is also pertinent that the learned Judge of the trial court has refused to grant any police aid, however passed the said order. The order impugned is not proper, correct and legal. It appears that the Second Appeal is pending before this Court. Even after this Court has stayed the effect of the impugned order dated 24.06.2005 passed by the Civil Judge, Junior Division, Soyegaon below Exhibit 1 in MARJI No. 8 of 2005, learned Judge of the trial court has passed similar order and this Court (Coram : R. M. Savant, J.) by order dated 07.01.2008 allowed the Writ Petition and quashed and set aside the said order. The impugned order is not sustainable in the eyes of law. The same is liable to be quashed and set aside. Hence, I proceed to pass the following order:

ORDER

- I. The Writ Petition is hereby allowed.
- II. The impugned order dated 24.06.2005 passed by Civil Judge, Junior Division, Soyegaon below Exhibit "1" in MARJI No. 8 of 2005 is hereby quashed and set aside.

III. The Writ Petition is accordingly disposed off. Rule is made absolute.

(V. K. JADHAV, J.)

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