

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO. 2792 OF 2011

NIRMALABAI W/O DINKARRAO BIRADAR AND OTHERS
VERSUS
SHALUBAI W/O DINKAR BIRADAR AND OTHERS

.....
Advocate for Petitioners : Mr. Mhase Madhaveshwari S.
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CORAM : V. K. JADHAV, J.
DATED : 12th MARCH, 2020

ORDER :-

1. Heard learned counsel for the petitioners-original plaintiffs.
2. The petitioners have instituted a suit bearing Regular Civil Suit No. 160 of 2010 for partition and separate possession. Petitioner No.1 claims to be the legally wedded wife of deceased Dinkar. So far as the respondent Nos. 2 and 3 are concerned, they are illegitimate daughters of deceased Dinkar. It is the case of the petitioners that behind the back of the petitioners, respondent No.1, who happened to be a keep of deceased Dinkar, alongwith her daughters had obtained succession certificate from the court by suppressing material facts in M.A. No. 37 of 2009. Pending the suit, the petitioners-original plaintiffs filed an application Exh.18 for staying the effect of the order passed by the Civil Judge, Junior Division, Nilanga in the said M.A. No. 37 of 2009 on 10.11.2009. Learned 2nd Joint C.J.J.D., Nilanga, by order dated 21.8.2010 below Exh.18 in R.C.S. No. 160 of 2010, rejected the application. Being aggrieved by

the same, the petitioners plaintiffs preferred M.C.A. No. 17 of 2010 and the learned Adhoc District Judge-1, Nilanga, by impugned judgment and order dated 17.2.2011 in M.C.A. No. 17 of 2010, dismissed the appeal. Hence, this writ petition.

3. Learned counsel for the petitioners-original plaintiffs submits that on 4.8.2011 while issuing notice, this Court has granted stay in term of prayer clause "C" and thereby the implementation, execution and operation of the order dated 10.11.2009 in Misc. Application No. 37 of 2009 passed by the Civil Judge, Junior Division, Nilanga is stayed. Learned counsel submits that the trial court thereafter proceeded with the suit. The petitioners plaintiffs have completed their oral and documentary evidence and the matter is now posted for defendants' evidence. Learned counsel submits that the trial court may dispose of the suit in a short period. Learned counsel submits that in view of the same, since stay granted by this Court is operating since 2011, the same may be continue till the trial court dispose of the suit on merits. Learned counsel submits that by way of prayer clause "C" in the suit, the petitioners-plaintiffs also sought relief of declaration that the order passed by the Civil Judge, Junior Division, in M.A. No. 37 of 2009 dated 10.11.2009 is null and void and not binding on the plaintiffs.

4. Though the respondents are duly served with the Rule notice, none appears for them.

5. In view of above, this writ petition can be disposed of by continuing the interim order passed by this Court till disposal of the suit. Hence, I proceed to pass the following order:-

O R D E R

- I. The interim order passed by this Court on 04.08.2011 in terms of prayer clause "C" i.e. stay to the implementation, execution and/or operation of the order dated 10.11.2009 in Misc. Application No. 37 of 2009 passed by the Ld. C.J.J.D. Nilanga shall remain continued till disposal of the suit bearing Regular Civil Suit No. 160 of 2010 pending before the trial court at Nilanga and the trial court may decide the suit on its own merits without getting influenced by continuation of the interim order till disposal of the suit.
- II. Writ petition is accordingly disposed of. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

rlj/