

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

26. WRIT PETITION NO. 1684 OF 2020

Shaikh Ahmed S/o Shaikh Mahmad
age 62 years occupation agriculture
R/o Bhoiwada, Sadar Bazaar, Ambajogai
Taluka Ambajogai Dist. Beed.

...Petitioner

VERSUS

1. Shaikh Samad S/o Shaikh Mahmad, age 46 years,
2. Shaikh Rehmat S/o Shaikh Mahmad, age 37 years,
3. Shenazbee W/o Shaikh Samad, age 43 years
4. Shaikh Shevarbee W/o Shaikh Mahmad, age 76 years

Nos. 1 & 2 agriculturists and Nos. 3 & 4 household
by occupation and all R/o Ravivar Peth,
Ambajogai Taluka Ambajogai Dist. Beed

5. Shaikh Niyamat S/o Shaikh Mahmad,
age 48 years occupation agriculture
R/o Sadar Bazaar, Ambajogai Tal. Ambajogai Dist. Beed

...Respondents

Mr. G.S. Rane, Adv., h/f. Mr. S.G. Chapalgaonkar, Adv. for petitioner
Mr. K.J. Suryawanshi, Advocate, h/f. Mr. I.D. Maniyar, Advocate for
Respts. No.1 to 4

CORAM : ROHIT B. DEO, J.

DATE : 29th January, 2020

PER COURT :

1. The petitioner is defendant No.2 in Reg. Civil suit No.

94/2018 brought by respondents No. to 4 - plaintiffs for perpetual injunction.

2. The parties shall be referred to by their status in the Trial Court.

3. The plaintiffs applied for temporary injunction restraining the defendants from interfering with their possession over the suit property, which is granted by the Trial Court. Defendants No.1 & 2 preferred separate appeals, which are dismissed. This petition is preferred by defendant No.2, who is dissatisfied with the concurrent view taken that the plaintiffs are in possession of the suit property.

4. I have perused averments in the suit plaint, written statement and the reasons recorded by the Trial Court and the Appellate Court and having done so, I do not find any error in the view concurrently taken by the Courts below.

5. The contention of the plaintiffs that the suit property is partitioned, is prima-facie substantiated by the Revenue record, which shows the plaintiffs and the defendants to be in separate possession of specific properties. Perusal of the written statement would reveal that defendant No.2 at one stage impliedly admitted

the partition, albeit, with the rider that the partition is contrary to the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. In any event, both the Courts below have taken a possible view on the basis of material on record and this Court would be loathe to interfere in writ jurisdiction since it is not shown that the discretion exercised capriciously.

6. The writ petition is dismissed.

7. Considering the relationship between the parties and the nature of the controversy, the Trial Court is requested to expedite the suit.

(ROHIT B. DEO)
JUDGE

Madkar