

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4644 OF 2018

WITH

WRIT PETITION NO. 4421 OF 2018

Sunita @ Shina Bap Ashok Lokhande and Anr. ... Petitioners.

V/s

Housabai Baburao Kedare and Ors. ... Respondents.

Mr. S. P. Dighe for the Petitioners.

Mr. Sachin Gite for the Respondent Nos.2 and 3

CORAM : A. S. GADKARI, J.

DATE : 12th MARCH, 2020

P. C. :

1. The Writ Petition No. 4644 of 2018 is arising out of Orders dated 14th November 2017 passed in Miscellaneous Civil Appeal No. 5 of 2017 and Writ Petition No. 4421 of 2018 is arising out of Miscellaneous Civil Appeal No.1 of 2017 by the learned District Judge, Niphad, District Nashik, allowing the said Appeals which were filed by the Original defendants against the Order dated 21st December 2016 passed below Exhibit-5 in Regular Civil Suit No. 76 of 2016.

The said Regular Civil Suit No. 76 of 2016 has been filed by the petitioners/original plaintiffs for declaration that, the petitioners have become owner of suit property in furtherance of Consent Terms executed in Regular Civil Suit No. 94 of 1980 and for other consequential reliefs.

2. The record indicates that, the Trial Court had allowed application below Exhibit-5 filed by the petitioners by its Order dated 21st December 2016 and interim relief was granted against the respondents/

original defendants. The Original defendant No.3 Smt. Manda Maruti Bodake filed Miscellaneous Civil Appeal No. 1 of 2017 whereas the other two defendants namely Smt. Houshabai Baburao Kedar and Smt. Yashoda Pundalik Nagare filed Miscellaneous Appeal No.5 of 17 before the District Court at Niphad, District Nashik. As noted earlier, by the impugned Orders, the Appellate Court has reverse the Orders passed by the Trial Court. While allowing the Appeal, the Appellate Court set aside the impugned Order therein dated 21st December 2016 passed below Exhibit-5 in R.C.S. No. 76 of 2016.

3. Perusal of record would clearly indicate that, even after, the compromise decree was passed in R.C.S. No. 94 of 1980, the respondents herein are in actual occupation and possession of the suit property. That, when the Revenue Authority conducted enquiry with respect to the 'cultivators' of the suit land, it was found that, the respondents were cultivating it and accordingly the names of respondents were entered into the said column as 'cultivators/Bhogwatadar' in the revenue record. Thus, prima facie, it appears that, the respondents are in possession of the suit property.

4. In view thereof, this Court finds that, the Appellate Court has not committed any error either in law or on facts while passing the impugned Order dated 14th November 2017.

5. Petitions are accordingly dismissed.

(A. S. GADKARI, J.)