

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

WRIT PETITION NO.6097 OF 2021

**BHASKAR DATTATRAO LANGOTE AND OTHERS
VERSUS
SANTABAI PANDITRAO SHERKAR AND ANOTHER**

...

Advocate for Petitioners : Mr. Nitin S. Kadarale
Advocate for Respondent No.1 : Mr. S. S. Gangakhedkar

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 29th JUNE, 2022

PER COURT :

1. The petitioners are aggrieved by the order passed by the learned District Judge-4, Parbhani below Exhibit-5 in R.C.A. No.46/2019, thereby rejecting the application for stay during the pendency of appeal.

2. The petitioners are original defendants No. 1, 3 and 4 in Regular Civil Suit No.216/2011 filed by respondent No.1/plaintiff seeking perpetual injunction against the defendants from obstructing peaceful possession of plaintiff over Survey No.270/6 admeasuring 1 Acre 31 Gunthas situated at Parbhani. The suit was decreed by the trial Court on 30-03-2018. The petitioners, thereafter preferred appeal challenging decree on 14-04-2019. In the appeal application Exhibit-5 is filed seeking stay to the trial Court's judgment and decree. The said application is rejected by the impugned order.

3. Heard Mr. Nitin S. Kadarale, learned advocate for petitioners and Mr. S. S. Gangakhedkar, learned advocate for respondent No.1. Perused the documents placed on record.

4. Learned advocate for petitioners, by pointing out admissions given by the plaintiff in her cross-examination, submits that since the plaintiff has admitted in her cross examination that there was no obstruction on the part of the defendants and she is not in possession of the suit land, the trial Court was not justified in decreeing the suit in her favour. These vital aspects are ignored by the appellate Court while rejecting the application Exhibit-5. He, therefore, submits that the impugned order be quashed and set aside by allowing the petition.

5. Learned advocate for respondent No.1/original plaintiff, on the other hand, supports the impugned order. He submits that there was injunction operating in favour of the original plaintiff since the beginning of the suit. In that view of the matter, the appellate Court was right in rejecting the prayer of the petitioners.

6. Though the trial Court has considered admissions given by the plaintiff in her cross examination, while decreeing the suit it has also taken into consideration that in R.C.S. No.109/1999 which was filed for declaration of ownership in respect of property Survey No.249/2, admeasuring 16 Acres 17 Gunthas and Survey No.270/6 admeasuring 1 Hectar 31 Gunthas situated at village Parbhani, the

trial Court has upheld the claim of the plaintiff and has declared that the plaintiff is owner and in possession of the land Survey No.270/6 Admeasuring 1 Acre 31 Gunthas (suit property). The property right declared in favour of the plaintiff is right in rem and the same is enforceable against the entire world. It is a matter of record that interim relief was granted in favour of the plaintiff by order dated 23-12-2011 and the same was continued till the decision of the suit on 30-03-2018. Admittedly, the petitioners have challenged the judgment and decree by filing appeal on 14-04-2019 and the application Exhibit-5 is filed on 15-04-2019. Learned advocate for respondent No.1 was justified in placing reliance on Sub-Rule (2)(b) of Rule 5 of Order 41 of the Code of Civil Procedure to contend that the petitioners have failed to approach within reasonable time.

7. First appellate Court has passed a well reasoned order which need not be interfered in the extra-ordinary writ jurisdiction. There is no substance in the writ petition. Writ petition is, therefore, dismissed.

(NITIN B. SURYAWANSHI, J.)