

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 WRIT PETITION NO.7340 OF 2019

SUNIL ANGAD POKALE AND ANOTHER
VERSUS
GAHININATH BHAGWAN PAWAR AND OTHERS

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Advocate for Petitioners : Mr V.D. Salunke
Advocate for Respondent Nos. 3 and 4 : Mr B.V. Kulkarni h/f Mr B.B.
Kulkarni
Advocate for Respondent Nos. 1 and 2 : Mr H.V. Tungar

CORAM : SANDEEP V. MARNE, J.

DATE : 16th NOVEMBER, 2022

PER COURT :

1. This petition is filed assailing order dated 01.04.2017 passed by the Jt. Civil Judge, Junior Division, Ashti, Dist. Beed in R.C.S. No. 832/2016 as well as the Judgment and order dated 29.03.2019 passed by the District Judge-8, Beed in Misc. Civil Appeal No. 27/2017.

2. The suit is filed by the plaintiffs/respondents for injunction simplicitor. The plaintiffs' application for grant of interim injunction was allowed by the trial court by order dated 01.04.2017. The petitioners/defendants filed Misc. Civil Appeal No. 27/2017 challenging the order passed by the trial court granting injunction. In that appeal, the application for stay was filed and by detailed order dated 30th May, 2017, the District Judge, after recording a finding that both the parties are in possession of the respective lands (except disputed portion) was pleased to allow the stay application and the order granting injunction by the trial court was stayed during the pendency of the appeal. The plaintiffs/respondents challenged the order of the District Court dated 30.05.2017 by filing Writ Petition

No. 13608/2018, which came to be disposed of by order dated 21st January, 2019 directing the District Judge to decide the appeal expeditiously. Thus, during pendency of the appeal, the order of interim injunction granted by the trial court remained stayed.

3. The District Judge, thereafter passed order dated 29.03.2019 and rejected the Misc. Civil Appeal No. 27/2017. One of the main reasons for rejection of appeal of the petitioners is that the plaintiffs/respondents produced 7/12 extracts establishing the possession of predecessor-in-title over the suit property and that the defendants/petitioners failed to produce such 7/12 extract proving their possession.

4. There are independent sale deeds in favour of the plaintiffs/respondents executed on 25th March, 1971 and in favour of the defendants/petitioners executed on 15.10.2012. It appears that some portion of the property is common in both the sale deeds. While the sale deed executed in favour of the plaintiffs/respondents, does not have prior permission of the Collector, the sale deed executed in favour of the defendants/petitioners is in pursuance of permission granted by the Collector.

5. Even though, the District Court has recorded the findings that the defendants/petitioners failed to produce any 7/12 extract of the property to prove their possession, my attention is drawn to 7/12 extract which shows name of the petitioner Sunil Angad Pokale being recorded under the column 'possession' in respect of lands admeasuring 1H 73R out of Gut No. 168.

6. Considering the above position and also considering the fact that the suit is pending since the year 2016, it would be appropriate to expedite hearing of the suit and continue the present position till decision of the suit.

7. As observed hereinabove, the injunction granted in favour of the plaintiffs was stayed by the District Court and after dismissal of the appeal of the petitioners by the District Court, this Court has granted stay on such injunction. In effect, there has been no injunction in favour of the plaintiffs during the pendency of the suit on account of interim order earlier granted by the District Court and the interim order granted by this Court in the present petition. In these circumstances, I proceed to pass the following order :-

ORDER

- (i) The hearing of the Regular Civil Suit No. 832/2016 is expedited and the Court of the Civil Judge, Junior Division, Ashti, Dist. Beed shall make an endeavour to decide the suit as expeditiously as possible, preferably within a period of one year from today.
- (ii) The trial court shall decide the suit on its own merits, uninfluenced by any of the observations made in the present order.
- (iii) Till the suit is decided, the interim order granted by this Court on 19.06.2019 shall continue to operate.
- (iv) With the above directions, the writ petition is disposed of. No costs.

[SANDEEP V. MARNE, J.]

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