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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 270 OF 2020**

MR. BHIKAJI KRUSHNAT PATILPETITIONERS
AND ANR

V/s.

KRISHNABAI MAHADEV TATE AND ORSRESPONDENTS

Mr. R. S. Mirpury Advocate for the Petitioners
Mr. Sandesh D. Patil i/b Ms. Divya A. Pawar Patil for Respondent
nos. 1 to 3

CORAM : NITIN W. SAMBRE, J.
DATE: APRIL 6, 2022.

P.C.:

- 1) Heard.
- 2) Petitioner, Plaintiff in R.C.S. No. 450/2016 based on a registered Will dated 19/04/2008 sought declaration of ownership and relief of permanent injunction.
- 3) Petitioner claimed that he is in settled possession of the Suit property not only based on aforesaid Will but was caretaker of Dnyanu who has executed Will. Temporary injunction is sought which was granted by the Trial Court vide order dated 26/07/2018 passed by 3rd Jt. Civil Judge Junior Division, Kolhapur.

4) Respondent, feeling aggrieved preferred Civil Misc. Appeal No. 175/2018 and 176/2018 which came to be allowed vide order dated 17/12/2019 passed by Ad-hoc District Judge-3 Kolhapur. As such, this Petition.

5) The contentions of learned counsel for the Petitioner are, Dnyanu once having executed registered Will and put the Petitioner in possession of the Suit property with Defendant no. 4, his mother, the Appellate Court ought to have inferred settled possession of the Petitioner over the Suit property. So as to substantiate the claim, he has relied on documents which are referred to by the Trial Court in para nos. 8 & 9 of the order granting temporary injunction. He would further claim that not only by virtue of aforesaid Will as deceased Dnyanu was residing with Defendant no. 4 and Petitioner, Petitioner continued to be in settled possession of the Suit property since last more than 30 years and that being so, order impugned passed by the Appellate Court is not sustainable and is liable to be quashed and set aside.

6) Mr. Sandesh Patil, learned counsel for Respondent would support the impugned order.

7) Defendants to the Suit are daughters of deceased Dnyanu who died in 2015. Dnyanu has inherited property from Rama alongwith his brother Dhondiba. In the aforesaid background, the Suit property gets colour of belonging to HUF/joint family. That being so, Respondent-Defendant became co-owners in the Suit property. Prima facie it appears that Suit property being ancestral property, Dnyanu does not get any right to bequeath the same in favour of Petitioner-Plaintiff that too by registered Will Deed.

8) Even if the Petitioner has tried to establish his settled possession based on documents as referred above, it has to be inferred that Petitioner is in joint possession as all of them became coparceners. In that view of the matter, in my opinion, order passed by the Appellate Court is quite justified. No case for interference is made out. Petition fails, stands dismissed.

9) Trial Court is expected to decide the Suit on its own merits without being influenced by the observations made herein above.

[NITIN W. SAMBRE, J.]