

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 3449 OF 2019

Ashok Aadgonda Tare & Anr. ... Petitioners

V/s.

Shyamgonda Tare & Ors. ... Respondents

Mr. Vivek V. Salunkhe for the Petitioners.

CORAM : ROHIT B. DEO, J.

DATE : 20th JUNE 2022

P.C. :

1. The petitioners instituted Regular Civil Suit 166 of 2016 seeking decree of perpetual injunction restraining the defendants from interfering with the peaceful possession of the plaintiffs over the suit agricultural field.

2. The claim is predicated on the assertion that the predecessors of the plaintiffs were in possession of the suit field from 1950 as tenant, and that the tenancy is inherited by the plaintiffs. The plaintiffs alleged that on 20.08.2016, the defendants threatened to take forcible possession of the suit field.

3. The learned Trial Judge was pleased to grant temporary injunction against the defendants. The said order was challenged in Miscellaneous Civil Appeal 32 of 2018 which is allowed by the Appellate Court vide judgment dated 23.04.2018, which is impugned.

4. The Appellate Court held that the plaintiffs have not shown *prima facie* case. In particular, the Appellate Court recorded a finding that the plaintiffs suppressed the institution of Regular Civil Suit 205 of 2011 which is filed by the plaintiffs in respect of the very same property. The Appellate Court was of the view that the plaintiff is guilty of suppression.

5. I agree with the Appellate Court in entirety. While the learned counsel for the plaintiffs would submit that the earlier suit is pending and that there is no interim order sought, and therefore, the plaintiff did not derive any advantage by the suppression, the submission is too simplistic. Significantly, the earlier suit which the plaintiff suppressed seeks partition of the very same property and the case of the plaintiff in the suit instituted in the year 2011 is that he is a coparcener and is entitled to share in the suit property. In the entire plaint in Regular Civil Suit 205 of 2011, there is no whisper of tenancy

right. On the other hand, in Regular Civil Suit 166 of 2016, the plaintiff has given up the claim on the basis of share in joint family property and is now claiming that he is a tenant.

6. The learned counsel for the petitioners points out that certain documents were placed on record in Miscellaneous Civil Appeal and therefore, the Appellate Court ought to have discarded the same. The extension of the submission is that if the Appellate Court intended to take documents into consideration, the appropriate course would be provisions of Order 41 Rule 27, which also applies to Miscellaneous Civil Appeal preferred under Order 43. The learned counsel for the petitioners is justified in the submission, as a proposition of law. However, the fact that there is some error in the order impugned or in the approach of the Appellate Court does not render imperative that writ jurisdiction must be exercised. I note that in response to specific query, the learned counsel for the petitioners has not disputed that the documents which pertain to the earlier litigation are authentic and genuine. It is clear that absolutely inconsistent stands are taken by the plaintiff and the fact that the suit is instituted in the year 2011 on the premise that the plaintiff is coparcener, is suppressed from the Court when Suit 166 of 2016 is instituted.

7. Considering the inconsistent stands taken, and the overall conduct of the plaintiff during the course of the litigation, I am not inclined to exercise writ jurisdiction.

8. Writ petition is dismissed.

9. Needless to say observations made herein are in the context of deciding the entitlement of injunction relief.

(ROHIT B. DEO, J.)