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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1395 OF 2017

WITH

CIVIL WRIT PETITION NO. 1396 OF 2017

SHRI. HANUMANT GANPAT WAGHE AND ANRPETITIONERS

V/s.

SHRI. TUKARAM DNYANDEO WAGHERESPONDENTS
AND ORS

Mr. Rupesh K. Bobade Advocate for the Petitioners

Mr. Rahul S. Kadam Advocate for the Respondent nos. 1 to 3 & 5

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 29, 2022.

P.C.:

1) Subject matter of proceedings inter-se between the parties hereto are land Gat Nos. 243, 243/1, 242, 231.

2) It is the case of Respondent-Plaintiff that deceased Devai based on mutation entry number 171 executed registered Will dated 21/06/1998 bequeathing part of the suit property being Gat No. 243/1 in their favour based on which prayer for declaration of

ownership and injunction not to disturb possession came to be moved. Suit was accompanied with an Application for grant of temporary injunction.

3) In a counterclaim by present Petitioner-Defendant, partition of the Suit property being land Gat Nos. 243, 242 and 231 alongwith land admeasuring 16/56 Sq. Ft. is sought.

4) Both parties lodged their claim that they are in settled possession.

5) Petitioners sought injunction restraining the Respondent-Plaintiff from disturbing his possession over the Suit properties whereas Respondent original Plaintiff sought temporary injunction restraining the present Petitioners from disturbing their settled possession over the Suit property being land Gat No. 243/1.

6) Trial Court rejected the prayer in relation to grant of temporary injunction in relation to land Gat No. 243/1 in favour of original Respondent-Plaintiff herein whereas prayer of the Petitioner-Defendant who has preferred counter claim for grant of temporary injunction came to be allowed.

7) Respondent-Original Plaintiff feeling aggrieved by the order of

the Trial Court of refusing injunction in his favour in relation to Gat No. 243/1 and granting injunction restraining Respondent in relation to balance of the land has preferred two Appeals.

8) Submissions of counsel for the Petitioner are, originally, suit properties were numbered as Gat Nos. 231, 243 and 242. Based on such Gat numbers, prayer for partition, separate possession and challenge to registered Will Deed dated 21/06/1998 is moved. According to him, relationship inter-se between the parties spelled out in the suit is not in dispute and as such there is presumption in favour of the Petitioner about jointness of family. In view of such presumption, status which Suit property gets is that of joint family property. In such an eventuality, he would urge that parties to the proceedings having joint interest and from 7/12 extract, it can be inferred that Petitioner is in possession of the Suit property in original Plaint i.e. land Gat No. 243/1. He would further urge that since there is challenge to registered Will Deed dated 21/06/1998 executed by deceased Devai, the Court below committed an error in granting injunction in favour of Respondent. He would further urge that mutation entry 171 was only for the fiscal purpose as mutation entry does not confer any right in favour of Devai to

bequeath the part of the Suit property in favour of Respondent-original Plaintiff. That being so, order impugned granting injunction is not sustainable.

9) The aforesaid submissions are countered by Mr. Rahul Kadam, counsel appearing for Respondent-original Plaintiff in the aforesaid Suit for declaration of ownership and injunction. According to him, mutation entry of 171 was effected thereby giving independent recognition to the right, interest and possession of Devai who expired in 2002. It can be inferred from the record that Devai being independent possessor of land Gat No. 243/1 was justified in bequeathing same vide registered Will dated 21/06/1998 which has more evidential value in the Indian Evidence Act. In addition, his contention is, what is sought by the Petitioner in counterclaim is, partition of land Gat No. 243 which does not exist on record during the lifetime of Devai, as already subdivisions were effected and land Gat No. 243/1 was mutated in his favour. He would further urge that aforesaid settled possession coupled with mutation entry of last 20 years apparently speaks of prima facie case and settled possession of Respondents. As such, Petitions are liable to be dismissed.

10) Considered submissions.

11) In the Suit in question, claim of Respondent-Plaintiff is based on registered Will Deed dated 21/06/1998. Said conveyance is based on registered Will Deed dated 21/06/1998. Such Will is based on mutation entry no. 171 in which land Gat No. 243/1 was mutated in the name of deceased Devai who in turn bequeathed same in favour of Respondent original Plaintiffs. The aforesaid mutation entry effected in Revenue record is a public document, which is having more evidential value than that of entry in 7/12 extract which is produced only for one year i.e. 2014 in favour of the Petitioner. In that view of the matter, Appellate Court in my opinion was justified in passing the order.

12) In the counter-claim the Petitioner has questioned legality of the registered Will Deed dated 21st June 1998 executed by deceased Devai. Perusal of the pleadings and the other material, viz - the documentary evidence does not depict existence of any concrete case in favour of the Petitioner. Even during the course of hearing the Petitioner has failed to demonstrate that the registered Will dated 21st June 1998 was obtained by misrepresentation, practicing fraud etc. The aforesaid material has rightly so prevailed

before the courts below while passing the orders impugned. Even the Petitioner has failed to demonstrate any contrary material to the extent of countering the observations made by both the courts below in orders impugned.

13) It appears that in past there was sub-division of the suit properties. Land Gat No. 243 accordingly was sub-divided from Gat no. 1 onwards. Petitioner in counterclaim has sought partition of land Gat No. 243 which does not exist on Revenue record as on date in view of aforesaid sub-divisions.

14) In this view of the matter, in my opinion, Courts below were justified in passing the orders impugned. That being so, no case for interference is made out. Petition fails, stands dismissed.

15) Needless to clarify that observations made herein above are confined to the extent of injunction Application and the suit claim be decided without being influenced by the findings recorded herein above.

16) In view of policy as regards expeditious disposal of old Suit, hearing of the Suit is expedited.

[NITIN W. SAMBRE, J.]