

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

**WRIT PETITION 1180 OF 2022**

Narayan Vasudev Yadav and Anr. ... Petitioners  
*Versus*  
Dattatray @ Mahesh Vasudev and Ors. ... Respondents

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Mr. Mahesh V. Rawool for the Petitioners.  
Mr. Sujay N. Gawade a/w Sumedha Dhopate i/by Shree & Co. for the  
Respondents 1 and 3.

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**CORAM : ROHIT B. DEO, J.  
RESERVED ON : 18<sup>th</sup> JULY, 2022  
PRONOUNCED ON : 27<sup>th</sup> JULY, 2022**

**JUDGMENT :-**

. Exception is taken to the judgment dated 5<sup>th</sup> March, 2021 rendered by the Appellate Judge in Miscellaneous Civil Appeal 7 of 2020 whereby the order dated 18<sup>th</sup> January, 2020 passed by the learned Jt. Civil Judge, Junior Division, Sawantwadi, Dist. Sindhudurg (Trial Judge) is reversed.

2. The Trial Judge was pleased to reject the application preferred by the plaintiffs under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short 'Code') seeking injunctive order restraining the defendants 1 and 2 from disturbing the peaceful possession of the plaintiffs and from disconnecting the water and electricity supply and

from obstructing the user of the well water. The learned Appellate Judge was pleased to allow the Miscellaneous Civil Appeal, vide judgment dated 5<sup>th</sup> March, 2021, the operative part of which reads thus :-

*“1. The order passed by the trial court in R.C.S. No. 51/2014 below Exh. 53 is set aside and instead following order is passed.*

*i. Application at Exh. 53 is allowed.*

*ii. Defendant No. 1 is directed to reconnect the water meter and the electricity connection of house No. E-Q-98/2 within 8 days from this order. If he fails to do so plaintiffs are entitled to get reconnect the water and electricity connection.*

*iii. Defendant Nos. 1 and 2 are hereby directed to remove the lock on iron cover of the Well situated in the suit property.*

*iv. Defendant Nos. 1 and 2 are hereby restrained from disturbing plaintiffs from enjoying the water and light till decision of the suit.*

*2. Defendant Nos. 1 and 2 shall bear costs of the appeal and pay costs to the plaintiffs.”*

3. During the pendency of the petition respondent 2 Smt. Geeta Vasudev Yadav expired and allowing interim application 3624 of 2022 preferred by the petitioners, the name of deceased respondent 2 is deleted from the cause title. According to the learned counsel for the petitioners, the death of respondent 2 has some significance and bearing on the controversy, which submission shall be considered at a later stage.

4. Regular Civil Suit 51 of 2014 is instituted by respondent 1 – Dattatray alias Mahesh Vasudev Yadav and deceased respondent 2 Smt.

Geeta alias Sumitra Vasudev Yadav for partition and separate possession. Petitioners Narayan Vasudev Yadav and Vithal alias Pradeep Vasudev Yadav and respondents 3 and 4 Shri Gajanan alias Ashok Vasudev Yadav and Smt. Vijaya alias Nivedita Narayan Chougule are arrayed as defendants.

5. The parties shall be referred to by their original status in the suit.
6. The plaintiffs claim partition and separate possession in respect of the several properties described at serial A to E, which according to the plaintiffs is owned by the joint family of which deceased Vasudev was the Karta. Plaintiff 1 and defendants 1 to 3 are the sons of deceased Vasudev, plaintiff 2 was the widow and defendant 4 the daughter of the deceased Vasudev.
7. The injunctive relief which is granted by the learned Appellate Judge by the order impugned pertains to the property situated at Sawantwadi and assigned Municipal House E 98 Q (at serial B).
8. Perusal of the written statement dated 18<sup>th</sup> March, 2015 which is filed by defendants 1 and 2 reveals that their stand is that the concerned house (property at serial B) was the self-acquired property of deceased Vasudev and vide Will dated 21<sup>st</sup> December, 2004, the said property is

bequeathed in favour of defendants 1 and 2.

9. During the pendency of the suit, plaintiffs preferred application – exhibit 53) dated 7<sup>th</sup> November, 2019 seeking injunctive relief in the nature of restraint order against defendants 1 and 2 from obstructing the water and electricity supply and the user of the well water. Defendants 1 and 2 filed their response reiterating that the said house is bequeathed in their favour by deceased Vasudev. Defendants 1 and 2 contended that their mother – plaintiff 2 is residing in the house as a member of the family. Defendants 1 and 2 contended that plaintiffs have no right or interest in the subject property. Defendants 1 and 2 contended that the plaintiff 1 is not residing in the subject property and insofar as the plaintiff 2 is concerned, she has not been prevented from using the water or electricity supply.

10. The learned Trial Judge recorded a finding that plaintiff 1 is not residing in the subject property. Reliance is placed on the address disclosed in the cause title of the plaint. The learned Trial Judge then recorded a finding that *prima-facie* the plaintiffs have not proved the right of user of water and electricity or that the plaintiffs are deprived of such user.

11. The learned Appellate Judge noted that the title of the defendants, which is claimed on the basis of Will, is seriously disputed. The learned Appellate Judge then noted that the possession of plaintiff 2 is not disputed. The learned Appellate Judge reasons thus :-

*“14. It would be pertinent to note here that plaintiff No. 2 Geeta, mother of plaintiff No. 1 and defendants resides in the suit property. She is old lady. Since the suit house is entered in the name of defendant No. 2, he gave application to disconnect the electricity and water connection. It is further seen that there is a lock to the iron cover on the well . Thus water from the well also cannot be drawn. As per the ratio in the **Civil Writ Petition No. 2454/2018 Madan Lal v/s state of Himachal Pradesh**, the Hon’ble Apex Court held that, “the potable water and electricity are considered as integral part of right of life within the meaning of Article 21 of the Constitution of India. It is held that these are basic necessities of human being can well be termed as essentials of human rights. If the title dispute, owing to the prescription of right to appeal under the statute remains pending for considerable long period, we see no reason to deny the petitioners family the basic amenities of water and electricity.”*

12. The learned Appellate Judge has further considered the submission that the plaintiff 1 is not residing in the subject property and that the documents which are placed on record to establish that plaintiff 1 does reside there, are created post institution of the suit. The learned Appellate Judge after observing that the gazette and the ration card are indeed prepared after the institution of the suit, considers the controversy thus :-

*“11 On perusal of the gazette and the ration card it is revealed that the documents are prepared after filing of the suit. These documents certainly cannot be considered. At the same time it is relevant to note here that though the electricity bills are produced by the respondents,*

*they are different from the disputed portion of house No. Q-98. It is seen that house No. Q-98 is being used in two parts. One part is E-Q/98/1 and another is E-Q/98/2. The name of consumer and the number of the consumer are also different. The bill produced by respondent No. 1 has name of consumer as Vitthal Vasudev Yadav i.e. respondent No. 2. It is seen that the building is having 2 blocks there are 2 electricity consumers and 2 meters. It is the case of the plaintiff that plaintiff No. 2 is mother resides in one part of House No. Q-98. It would be relevant to note here that the fact that she resides in house No. Q-98 is not denied by the defendants. It is the case of the defendant No. 1 that plaintiff No. 2 resides with them.*

*12. It would be pertinent to note here that mother of defendants and plaintiff No. 1 is party to the suit fled by plaintiff as plaintiff No. 2. Defendants have not denied it. They have not claimed that she is wrongly mentioned as plaintiff. Further the documents received as per RTI discloses that the electricity and tap connection of house No. Q-98/2 is cut. The connection for part of house No. Q-98/1 is intact. Further the application for the same was given prior to decision of Exh. 53. Once the application at Exh. 53 was decided connection was cut of. If plaintiffs or rather plaintiff No. 2 does not reside in part of house No. Q-98/2 why would necessity arose to cut of the light and tap connection. It is seen that plaintiff No. 1 and the defendants are siblings. Vasudev was their father. The defendants are claiming the title to the suit property as per the Will executed by Vasudev their father. Names of respondent Nos. 1 and 2 are entered as per the Will. This Will is challenged by the plaintiff No. 1 as well as defendant No. 3 Gajanan who are also sons of Vasudev.*

*13. Defendant No. 3 has fled one RCS No. 53/2014 for declaration and injunction. The address of defendant Nos. 1, 2 and plaintiff No. 2 Geeta, their mother are mentioned as resident of New Khaskilwada near Shilpgram, Tilari Colony, Sawantwadi. The address of plaintiff No. 1 is mentioned as resident of near Ravindra Karyalaya, behind Police quarters Salaiwada, Sawantwadi. Learned advocate had argued that it shows that plaintiff No. 1 does not reside in the suit property. It is true that the address of plaintiff No. 1 is mentioned so but at the same time it cannot be denied that though address of defendant No. 1 Narayan is mentioned as Q-98 New Khaskilwada i.e. of the suit property he does not reside there, too. If he was residing at the given address why would he disconnect the light and tap water connection. Further it would be relevant to note here that this suit is fled by defendant No. 1 Gajanan. The addresses are given by him. There is nothing on record to show that summons of plaintiff No. 1 was received on the address given at Exh. 1 in RCS No. 53/2014.”*

13. Having heard the learned counsel for the parties at length, I am

not inclined to interfere in writ jurisdiction.

14. The learned counsel for the petitioners would submit that the death of their mother during the pendency of the petition is reason enough for setting aside the impugned judgment. According to the learned counsel for the petitioners, while the possession of their mother was never in dispute, the plaintiff 1 was not residing in the suit property. Such submission was canvassed in appeal and is duly considered. I am not inclined to hold that the consideration by the learned Appellate Judge suffers from such infirmity as would warrant interference in writ jurisdiction. Writ jurisdiction cannot be exercised only because the finding of fact, particularly while exercising discretionary jurisdiction, is according to the writ Court, incorrect. Unless, there is demonstrable perversity in the sense that the finding arrived at would not appeal to any reasonable mind, or there is manifest error in the legal principles on which the finding is premised and grave miscarriage of justice has occasioned, the writ Court must be slow to interfere.

15. The petition is without substance and is dismissed.

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**[ROHIT B. DEO, J.]**