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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 7041 OF 2019

MR. ARJUN KALLAPPA PATIL AND ANR

....PETITIONERS

V/s.

**SHRI. VISHNU KALLAPPA PATIL
AND ANR**

.....RESPONDENTS

Mr. Ashish Gaikwad i/b Mr. Yogesh Bamne for the Petitioners
Mr. Yashodeep Deshmukh, Ms. Vaidehi Deshmukh, Kinjal Kanani i/b
Mr. Muzaffar Patel for Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 23, 2022.

P.C.:

1) R.C.S. No. 176/2015 is initiated by the Petitioner-Plaintiff seeking declaration and injunction in which he has alleged that he is in possession of the Suit property by virtue of family arrangement dated 24/05/2005. Based on documentary evidence placed on record, the Trial Judge granted temporary injunction on 12/02/2016 restraining Respondent-Defendants from interfering with peaceful possession of the Plaintiff over the Suit property till disposal of the

Suit, however, vide impugned order, learned District Judge set aside the same on 11/06/2018. As a consequences, Petitioner-Plaintiff, feeling aggrieved, preferred this Petition.

2) I have appreciated the reasons recorded by both the Courts below.

3) Though it is claimed by the Respondent-Defendant that alleged family arrangement dated 24/05/2005 even if was entered into, however, same was never acted upon and the revenue record till date stands in the name of Respondent in view of order of adjudication carried out. He would further claim that Respondent-Defendants have every share in the Suit property same being ancestral. As such, Appellate Court was justified in rejecting the prayer for temporary injunction.

4) I have appreciated said submissions in the light of grounds pleaded in the Writ Petition and also observations of both the Courts below in the matter of adjudicating the issue of grant of temporary injunction.

5) What can be inferred is, Suit property is ancestral one. Accordingly family arrangement was entered into on 24/05/2005.

Even if it is claimed by the Respondent that said family arrangement was not acted upon, Petitioner-Plaintiff based on various documents has established his settled possession. Said documents are duly considered by the Trial Court while granting temporary injunction which are in the nature of 7/12 extract, permission for constructions, property tax memo etc. As such, it can be inferred that, Petitioner-Plaintiff is in settled possession of the Suit property. Apart from above, it is settled position of law that even if there is presumption as to existence of joint family, however, same cant be stretched to presumption about the extent of joint possession.

6) That being so, the Appellate Court, in my opinion has committed an error in vacating the injunction merely on the ground that family arrangement was not acted upon.

7) As far as the Judgment and Decree delivered in R.C.S. No. 90/2019 is concerned, even if the said Decree is passed by consent, the fact remains that documents referred above demonstrates settled possession of the Petitioner over the Suit property which the Court below has failed to appreciate.

8) That being so, order impugned dated 11/06/2018 passed by the

learned District Judge is hereby quashed and set aside and the order granting injunction on 12/02/2016 stands restored to file.

9) However, having regard to the fact that Suit is pending, even if initial revenue entry is in favour of Petitioner which was subsequently upset in favour of Respondent, Petitioner is restrained from creating third party interest till the suit is decided.

10) Considering the fact that Suit is pending since 2015, hearing of the same is expedited.

11) Petition stands allowed and disposed of in above terms.

[NITIN W. SAMBRE, J.]