

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 1568 OF 2018**

Changdev Bhavrao Bare

.. Petitioner

Versus

Indubai Pralhad Pagare and Ors.

.. Respondents

-
- Mr. Tushar N. Sonawane, Advocate for Petitioner
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CORAM : MILIND N. JADHAV, J.**DATE : DECEMBER 05, 2022.****P.C.:**

1. Heard Mr. Sonawane, learned Advocate for Petitioner.
2. By the present Petition, Order dated 27.07.2017 below Exhibit-15 in Miscellaneous Civil Appeal No. 30 of 2017 passed by the Learned District Judge-2, Niphad is under challenge.
3. Exh. 15 has been filed by Petitioner (Original Defendant No.1) for stay of the Judgment and Order of even date passed by the learned Appellate Court in favour of original Plaintiffs. The common order under Exh. 5 and Exh. 26 dated 26.04.2017 was passed by the Trial Court restraining the Petitioner (Defendant No.1) from causing obstruction to the peaceful possession of the Plaintiffs over the suit land.
4. According to Mr. Sonawane, Petitioner is in possession of the suit land and he had sought stay of the order dated 27.07.2017.

5. However the learned Appellate Court while rejecting stay in paragraph No. 4 of the said order has held as under:

"In the judgment of Miscellaneous Civil Appeal No. 30/2017, this court has specifically held that Respondent No. 1 to 3 are only responsible for creating and fabricating forged two sale deeds. Not only this, they have also created a forged death certificate of Deubai and have also impersonated Indubai with one Jijabai and created and forged documents. Therefore, on the basis of such false and fabricated documents, Respondents do not have any right, title or interest over the suit land. There is also criminal complaint filed against them before the concerned Judicial Magistrate, First Class and in an inquiry under Section 202 of the Code of Criminal Procedure, it is revealed in the investigation of the Investigating officer that Respondents are the culprits for forging sale deeds. In such circumstances and when the suit land is the ancestral property of Indubai and she is in settled possession of the same, question of possession of the Respondents over the suit land doesn't arise. Hence, there is no case to grant ad-interim injunction as prayed. Hence, the application is rejected with no order as to costs."

6. Thus it is seen that, the learned Appellate court has come to the conclusion that the suit land is the ancestral property of the original Plaintiff No.1 and she is in settled possession of the same. That apart, the learned court has also given others reasons for rejecting the stay.

7. The findings returned by the learned Appellate court do not require any interference at this stage.

8. However considering the profuse request of the learned Advocate for Petitioner for expeditious decision of the suit proceeding, the learned trial court is requested to dispose the pending Regular Suit No. 144/2016 between the parties within a period of 6 months from the date of uploading of this order. All contentions of both parties are

expressly kept open. The learned trial court shall not be influenced by any of the observations made in this order.

9. With the above direction Writ Petition stands disposed.

[MILIND N. JADHAV, J.]

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