

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

53 WRIT PETITION NO.5933 OF 2021

RAVINDRA BHAUSAHEB SINARE AND OTHERS
VERSUS
LANKABAI SHRIDHAR SINARE AND OTHERS

Mr. Rahul R. Karpe, Advocate for the Petitioners.

Mr. Umakant U. Wagh, Advocate for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATED : FEBRUARY 09, 2023.

PER COURT :

1. By this petition, the challenge is to the order dated 19th March, 2021 whereby the respondent No.1's application came to be allowed and the sugar factory, which was not even party to the proceedings, was directed to make the payment of 50% of the amount due on account of sale of sugarcane to the Petitioners and to deposit the balance 50% in the Special Civil Suit No 3 of 2020 till further orders.

2. Special Civil Suit No.3 of 2020 was instituted by the Respondent No 1 seeking relief of partition and separate possession and for declaration that the Will dated 14th October, 2014 is forged and fabricated Will and not binding upon the plaintiff.

3. It is the case of the plaintiff that the Will dated 14th October, 2014 which has been executed by the husband of the plaintiff in favour of the petitioners is forged and fabricated. In the proceedings, an application came to be filed for appointment of Court Commissioner in respect of the suit properties, which came to be rejected. Subsequently, an application was filed by the plaintiff seeking the relief of deposit of 50% of the amount receivable from the sugar factory in respect of sugarcane crop which was grown on the property.

4. Learned counsel for the petitioners submits that the petitioners are in a possession of the property by virtue of the Will dated 14th October, 2014 and as such have cultivated the land. He would further submit that in the proceedings there is claim for mesne profit and as such if the plaintiff succeeds, she would be entitled to mesne profit, and for the said purpose, at this stage, 50% of the amount which is receivable on account of sugarcane crop ought not to be have been directed to be deposited.

5. Per contra, learned counsel appearing for the respondents submits that the property on which the crop is cultivated is an undivided property and as such, the petitioners as well as plaintiff were entitled to the benefits of the said property. He would further submit that the plaintiff is a widow and without any source of income and considering that, by the alleged Will, the petitioners have taken possession of entire property, there is justification for deposit of 50% of the receivables.

6. Considered the rival submissions of the parties.

7. Special civil suit has been filed by the plaintiff in year 2017 for declaration that the Will dated 14th October, 2014 is false and fabricated document and for partition and separate possession of the suit property as well as mesne profit. It is not disputed that the petitioners are in a possession of the property which is described in the plaint at Sr.No.1, although the contention of the learned counsel for the Respondent No.1 is that the same has been occupied forcibly. The fact cannot be ignored that the petitioners were in possession of the suit property and have cultivated the sugarcane crop. In my opinion, as the cultivation is being carried out by the petitioners, they are entitled to the benefits of their efforts. In event, the plaintiff succeeds, she will be entitled to the mesne profit which will include the benefits derived by the Petitioners from the suit property. At this stage, unless the rights have crystalized, by taking a sympathetic view the petitioners cannot be restrained from reaping the benefits of the cultivation. The plaintiff has not filed any application seeking joint possession and or seeking permission to cultivate the land along with the petitioners but has merely filed this application seeking the benefit of the crop which is cultivated. The issue as to the genuineness of the Will Deed will be decided during the trial.

8. For the reasons above, the petitioners cannot be deprived of the fruits of their efforts, and the impugned order directing the sugarcane factory which is not even party to the

proceedings to make the payment of 50% amount to the petitioners and to deposit the balance 50% amount in the court cannot be sustained.

9. In light of the above facts, the petition succeeds, the impugned order dated 19th March, 2020 is hereby quashed and set aside.

(SHARMILA U. DESHMUKH, J.)