

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

WRIT PETITION NO.2560 OF 2019

Ghanshyam Laxman Sutar
and another

.....Petitioners

Versus

Shakuntala Shrikant Sutar
and others

.... Respondents

Mr. Kuldeep U. Nikam, Advocate for the Petitioners.

Mr. Gajanan M. Savagave, Advocate for the Respondent
Nos.1 to 3.

CORAM : SARANG V. KOTWAL, J.

DATE : 10th MARCH, 2023

P.C. :

1. In this Petition, the petitioners are challenging the order dated 12.11.2018 passed by the District Judge-6 & Additional Sessions Judge, Sangli in Misc. Civil Appeal No.54/2014. Vide that order, the order dated 21.1.2014 passed by the 5th Jt. Civil Judge, Junior Division, Sangli was confirmed. Vide the impugned orders, the petitioners were restricted from creating third party interest, creating any encumbrances and from disturbing the possession of the

original plaintiffs.

2. Heard Shri Kuldeep Nikam, learned counsel for the petitioners and Shri Gajanan Savagave, learned counsel for the respondent Nos.1 to 3.

3. The petitioners are the original defendant Nos.1 & 2. The respondent Nos.1 & 2 are the original plaintiffs.

4. The plaintiffs have filed Regular Civil Suit No.118/2013 before the Civil Judge, Junior Division, Sangli for partition and possession of the ancestral property and for declaration that the Will executed in favour of the defendant No.1 was illegal.

5. During the proceedings before the trial Court, an application under Exhibit-5 was filed for temporary injunction. The learned trial Judge allowed the application made by the plaintiffs i.e. the respondent Nos.1 & 2 herein as mentioned earlier and the aforementioned order was passed.

6. Learned counsel for the petitioners submitted that in both the impugned orders, there is absolutely no

discussion about how and whether the plaintiffs were in possession of the suit property. Therefore, the finding to that effect is absolutely without reasons and there was no material to justify passing of that particular part of injunction.

7. I have perused both the orders. As rightly submitted by learned counsel for the petitioners, there is no discussion regarding as to who is in possession of the suit property as of today and how that possession was likely to be disturbed by the petitioners.

8. Learned counsel for the respondent Nos.1 & 2 also could not point out any discussion on that point. Therefore, this issue will have to be freshly considered by the trial Court. As far as the other part of not creating any third party interest or encumbrance is concerned, the reasoning given by both the learned Judges appears to be sound. Therefore, I do not see any necessity to disturb that particular part of the impugned orders. Hence, the following order :

:: O R D E R ::

- i. The order dated 12.11.2018 passed by District Judge-6 & Additional Sessions Judge, Sangli is set aside. The trial Court i.e. the 5th Jt. Civil Judge, Junior Division, Sangli is directed to consider the Exhibit-5 application afresh.
- ii. It is clarified that such consideration would be restricted to the consideration of granting injunction in respect of possession of the parties. It is also clarified that the operative part regarding not creating third party interest or encumbrances in respect of the suit property passed against the petitioners is maintained.
- iii. Hearing of the suit is expedited.
- iv. Writ Petition is disposed of accordingly.

(SARANG V. KOTWAL, J.)