



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5870 OF 2023

Vilas Vasant Rao Bhagwat & Ors.

....Petitioners

V/S

Sarjerao Baban Shewale & Ors.

....Respondents

...

Mr. Drupad S. Patil a/w Mr. Nimit Kumar Pansare for the Petitioners.

...

CORAM: SANDEEP V. MARNE, J.

DATE : AUGUST 18, 2023.

P.C.:

1 By this Petition, Petitioners-Plaintiffs challenge the judgment and order dated 13 November 2022 passed by the District Judge-15, Pune dismissing the Miscellaneous Civil Appeal No.335 of 2022. In Miscellaneous Civil Appeal No.335 of 2022, Petitioners-Plaintiffs had challenged order dated 19 September 2022 passed by the Trial Court rejecting the application for grant of temporary injunction.

2 Petitioners-Plaintiffs have filed Regular Civil Suit No.675 of 2020 for partition of suit property bearing Survey No.22/13/1 to 8 situated at village Shewalwadi, taluka Haveli, District Pune. In their suit Plaintiffs-Petitioners filed application for temporary injunction to restrain Defendants from creating third party rights in respect of the suit property bearing Survey No.22/13/6 and 22/13/7.

3 I have gone through the order passed by the Trial Court as well as the judgment and order passed by the Lower Appellate Court. Both the Courts have placed heavy reliance on Phalani Patrak dated 8 August 1985 by which the land bearing old Surey No.192A/13 was sub-divided into eight parts bearing Survey Nos.192-A/13/1 to 8. By that Phalani Patrak, eight separate portions of lands have been allotted in favour of Bhagwat family and Shewale family. Plaintiffs-Petitioners are Bhagwat family. Under the Phalani Patrak, land bearing old Survey Nos.192A/13/3 and 192A/13/8 came to the share of Bhagwat family while rest of the land came to the share of Shewale family. Both the Courts have held that Plaintiffs-Petitioners did not challenge the said Phalani Patrak at any time after the year 1985 and acquiesced in the position that there was partition of land bearing old Survey No.192A/13 (new Survey No.22/13).

4 Mr. Patil, the learned Counsel appearing for the Plaintiffs-Petitioners would strenuously urge that Phalani Patrak was not effected for partition of the property but was effected only for the purpose of correction of revenue entries. That Phalani Patrak was not effected at the instance of any particular party who approached the revenue authorities with a case that there was partition between Shewale family and Bhagwat family.

5 In my view, the aforesaid submissions canvassed by Mr. Patil may be relevant for the purpose of final decision of the suit. For the purpose

of deciding the application for grant of temporary injunction, conduct of Petitioners-Plaintiffs in not raising any challenge to sub-division of the land in the year 1985 by virtue of Phalani Patrak is a major factor which would go against Petitioners-Plaintiffs. There are concurrent findings recorded by the Trial Court and the lower Appellate Court. No case is made out for interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India. The Writ Petition being devoid of merits dismissed without any order as to costs.

6 It is clarified that the Trial Court shall not be influenced by any of the observations made in the present order while finally deciding the suit and all points raised by the parties are left open.

(SANDEEP V. MARNE, J.)