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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4150 OF 2022

Dadaso Annaso Aware & Anr.

.. Petitioners

Versus

Ramchandra Rajaram Aware & Anr.

.. Respondents

Mr. Vishwanath S. Talkute for Petitioners.

Mr. Pradeep S. Gole for Respondents.

CORAM: SANDEEP V. MARNE, J.

DATE: 16 JUNE 2023

P.C.:

1. This Petition is filed by the Petitioners challenging the judgment and order dated 6 January 2022 passed by the Ad-hoc District Judge-2, Satara thereby setting aside the order dated 22 February 2016 passed by the Trial Court granting temporary injunction in favour of the Petitioners/Plaintiffs.

2. The Petitioners/Plaintiffs have instituted Regular Civil Suit No. 213 of 2014 seeking injunction against the Defendants from interfering with Petitioners' possession of the suit property. The suit of the Petitioners proceeds on a footing that a partition of the suit property has been effected in proceedings pending before the Tahsildar and that the Petitioners/Plaintiffs have been put in physical possession of the suit property.

3. On the contrary, it is the case of Defendants that there is no partition by metes and bounds as the partition is yet to be confirmed under the provisions of Rule 7 of the Maharashtra Land Revenue (Partition of Holdings) Rules, 1967. It is also a case of the Defendants that the orders passed by the Tahsildar are subject matter of challenge before the revenue authorities and till finalization of those proceedings, it cannot be construed that the partition has attained finality.

4. After the Petitioners/Plaintiffs filed their suit, the Trial Court passed the order dated 7 October 2014 granting ad-interim injunction in their favour restraining the Defendants from interfering with Plaintiffs' possession of the suit property. Thereafter, plaintiffs' application for temporary injunction came to be decided in their favour by order dated 22 February 2016 and ad-interim injunction earlier granted was made absolute during pendency of the suit.

5. Aggrieved by the order dated 22 February 2016 passed by the Trial Court, the Defendants filed Misc. Civil Appeal No. 64 of 2016. Defendants set up a case before the District Court that the partition effected by the Tahsildar had not attained finality on account of the fact that the proceedings instituted by the Defendants were pending before the Divisional Commissioner, Pune. Considering pendency of proceedings before the Divisional Commissioner, Pune, as one of the relevant factors, the Appellate Court proceeded to reverse the order passed by the Trial Court and lifted the injunction granted in favour of the Plaintiffs by its judgment and order dated 6 January 2022.

6. The District Court by its order dated 6 January 2022 stayed the effect of its order till appeal period was over. This Court, by order dated 7 April 2022, has continued the interim protection granted by the District Court till further orders and the said protection continues to operate till date.

7. Mr. Talkute, the learned counsel appearing for the Petitioners would contend that the injunction is operational in favour of the Petitioners/Plaintiffs since 7 October 2014 and the same deserves to be continued till disposal of the suit. He would further submit that all the remedies adopted by the Defendants before the revenue authorities have been decided against the Defendants. He would submit that though initially the SDO had allowed the Appeal of the Defendants, the Collector subsequently set aside the order of the SDO and confirmed the order of the Tahsildar. He would further submit that Defendants approached the Divisional Commissioner, Pune in revision; however, their revision application has also been rejected by the Divisional Commissioner on 16 December 2022. He would, therefore, submit that the only reason of pendency of proceedings before the Divisional Commissioner cited by the District Court for allowing Appeal is no longer open. He would pray for setting aside the order of the Appellate Court.

8. Mr. Gole, learned counsel appearing for the Respondents/Defendants would oppose the Petition and support the order passed by the District Judge. He would submit that though the proceedings before the Divisional Commissioner have been decided against the Defendants by order dated 16 December 2022, the Defendants have

filed Writ Petition Stamp Nos.7049 and 7050 of 2023 in this Court and until those writ petitions are decided, the order passed by the District Court is required to be continued. He would submit that there is no finality to the partition effected by Tahsildar and, therefore, Petitioners/Plaintiffs are not entitled to any relief.

9. Having heard the learned counsel for the parties and after perusal of the orders passed by the Trial Court and Lower Appellate Court, it is seen that injunction is operational in favour of the Petitioners/Plaintiffs since 7 October 2014 i.e., for the last 9 long years. The District Court was impressed by pendency of proceedings initiated before the Divisional Commissioner and mainly on that ground, the Appellate Court had reversed the order passed by the Trial Court. Now the revision initiated by the Defendants before the Divisional Commissioner have been rejected on 16 December 2022. It is submitted that the Defendants have filed writ petitions in this Court challenging the order passed by the Divisional Commissioner. Without commenting anything about maintainability of the writ petitions in this court in the light of remedy of filing revision before the State Government, it can be seen that the Defendants have successively lost before the revenue authorities inspite of their challenge to the partition effected by the Tahsildar. The Plaintiffs have been put in physical possession of the suit property by the Tahsildar. This fact is not contested by the Defendants in any manner. What is essentially challenged by the Defendants is the factum of partition. Whether the partition is legally valid or not is something which would be decided in the

proceedings initiated by the Defendants under the provisions of the MLRC, 1966. However, since the possession of Plaintiffs over the suit property is not disputed, in my view, the Trial Court was right in clamping injunction against the Defendants. The order of the Trial Court granting ad-interim injunction on 7 October 2014 continues to operate for the last 9 long years. In that view of the matter, the order passed by the Appellate Court cannot be sustained.

10. Accordingly, the writ petition is allowed and the order dated 6 January 2022 passed by the Ad-hoc District Judge-2, Satara in Misc. Civil Appeal No. 64 of 2016 is set aside and order dated 22 February 2016 passed by the Joint Civil Judge, Junior Division, Phaltan is confirmed.

11. At this stage, the learned counsel for the Respondents would submit that the suit pending before the Trial Court be expedited. I am not aware about the pendency of the cases before the Trial Court. However, I am sure that Trial Court would take due note of the fact that the suit is pending since the year 2014 and would accord due priority to the same considering pendency of old cases before it. No specific direction in this regard is issued.

12. Needless to state that the Trial Court would not be influenced by any of the observations made in this order while deciding the suit finally.

(SANDEEP V. MARNE, J.)