

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5952 OF 2021

~~Vasant Eknath Kulkarni~~

(since deceased) through heirs and LR.

Vaibhav Vasant Kulkarni & Anr.

.. Petitioners

Versus

Ashok Ishwara Chougule

.. Respondent

-
- Mr. Chetan G. Patil for Petitioners
 - Mr. Manoj A. Patil for Respondent
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 06, 2023

P.C.:

1. Heard Mr. Chetan Patil, learned Advocate for Petitioners and Mr. Manoj Patil, learned Advocate for Respondent. Perused the record of the case.

2. Present Writ Petition takes exception to the order dated 03.03.2021 passed by the learned District Judge, Kolhapur in Misc. Civil Appeal No. 141 of 2020 against the order dated 11.12.2020 passed by the learned Trial Court below Exh. 5 in R.C.S. No. 136 of 2020. The order passed under Exh. 5 is in favour of the Defendants whereas the order passed by the learned District Court is in favour of the Plaintiff.

3. Regular Civil Suit No. 136 of 2020 has been filed by the Plaintiff for permanent injunction. It is the contention of both the

parties before me that they are in possession of the suit property/land, disputed portion of the suit property / land. Be that as it may, considering that the substantive suit has been filed before the learned Trial Court, it would be the subject matter of adjudication. Plaintiff claims to be in possession of the suit property as Bhogvatadar which is strongly refuted by the Defendants. Before the learned trial Court as well as before the learned Appellate Court, both the parties have referred to and relied upon the substantial documents in support of their respective claims. Substantive disputed question of facts have therefore arisen due to the various orders passed by the statutory authorities as also the mutation entries. All contentions of the parties to claim permanent injunction as also to oppose the injunction would depend upon proving of the material / evidence placed before the learned Trial Court as well as the Appellate Court which forms part of the two substantive orders.

4. Be that as it may, the learned Trial Court is requested by this Court to dispose of R.C.S. No. 136/2020 within a period of 12 months from today. Needless to state that the learned Trial Court shall not be influenced by any of the observations and findings returned in the orders passed by the learned Trial Court below Exh. 5 as also by the learned District Court passed in the Appellate proceedings which is impugned in the present Petition. The suit shall

be proceeded strictly on its own merits and without being influenced by any of the findings given in the aforesaid two orders as also this order. Parties shall not seek unnecessary adjournments unless absolutely necessary.

5. In view of this order, the impugned order dated 03.03.2021 in Misc. Civil Appeal No. 141 of 2020 stands set aside. It is clarified that the learned Trial Court shall not be influenced by any observations in the order dated 11.12.2020 passed below Exh. 5 also.

6. Needless to state that both the parties are directed by this Court to maintain status quo in respect of their holdings in respect of the suit property/land and / or disputed portion of the suit property / land till determination of the suit by the learned Trial Court as directed above.

7. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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