

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7584 OF 2023

Bhamabai Ramchandra Hattikar	... Petitioner
<i><u>Versus</u></i>	
Khushibai Sukhdeo Aiwale	... Respondent

— —

Mr. Milind Deshmukh for the Petitioners.
Ms. Rati S. Sinhasane for the Respondent.

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : June 28, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the concurrent findings of the trial Court and the Appellate Court allowing the respondent's application for injunction seeking to restrain the Petitioner from obstructing the possession of the Respondent and restraining the Petitioner from alienating the suit property.

3. The factual matrix is that the Special Civil Suit No.930 of 2019 was instituted by the Respondent seeking declaration that Will

executed by her deceased-husband-Sukhdev is false and fabricated and the Respondent being the wife of the deceased-Sukhdeo is a legal heir.

4. Learned counsel appearing for the Petitioner submits that the Petitioner is the sister of Sukhdev, and when Sukhdev was not keeping well, the Petitioner had shifted into the house of the Sukhdev to look after her ailing brother. He would further submit that after the death of Sukhdev in 2018, she continued to reside in the property of Sukhdev alongwith her husband. He would further submit that there is Will executed in her favour bequeathing half portion of the property i.e. the constructed portion of the property in her favour. He would further submit that being in possession of the property, he has the photographs to show her presence in the property as also CCTV footage and the electricity bills. He disputes that the Respondent was in possession of suit property.

5. *Per contra*, learned counsel appearing for the Respondent submits that the Respondent is the joint owner of the property and the said position is not disputed. She would further submit that the Petitioner was permitted to reside in the house for the purpose of

looking after her ailing husband and after he expired, the permission to reside stands withdrawn. She would further dispute the execution of Will and would submit that the same is the subject matter of trial.

6. Considered the submissions.

7. The facts are not disputed that the Respondent is the wife of the Petitioner's brother and the joint owner of the property in question. The Petitioner was the sister of Sukhdev and during his ill-health was residing in the house to look after the ailing brother. It is claimed that the deceased Sukhdeo has executed a Will, however, genuineness of the Will being disputed by the Respondent wife is the subject of the trial. The photographs which were produced on record by the Petitioner have not been rightly considered, as she was the sister of Sukhdeo and her presence in the house cannot be said to be evidence of possession and also electricity bills are of the year 2021. Even otherwise assuming that the Will has been executed the same will take effect after the death of Sukhdeo and as such, the question arises as to whether the Petitioner was in possession of the premises in her own right. There is the distinction between being in actual possession of premises in capacity of the owner/occupant or being in

permissive possession. In the present case, possession of the Petitioner is of a permissive possession and purpose was to look after her brother as stated by the Petitioner herself. Subsequently, the permission has been withdrawn and the Petitioner cannot be said to be in possession of the premises. It is settled that the possession follows title and the Respondent-wife being joint owner of the property would be in possession.

8. The concurrent findings of the Trial Court and the Appellate Court is that the Petitioner has failed to prove her possession over the suit property and as such, in exercise of the powers under Article 227 of the Constitution of India, I am not inclined to interfere with the concurrent findings of the trial Court.

9. In view thereof, there is no merit in the writ petition. Writ Petition stands dismissed.

(Sharmila U. Deshmukh, J.)