

rrpillai

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

WRIT PETITION NO. 11924 OF 2022

Dashrath Shankar Choudhari ... Petitioner

vs.

Nanaso Shankar Choudhari since Dec. ... Respondents
through LRs and Anr.

Mr. Saurabh Oka for the Petitioner.

Ms. Manish Devkar a/w. Mr Shankar Katkar for Respondent
nos. 1A to 1E and 2.

CORAM : SANDEEP V. MARNE, J.

DATED : 24 JANUARY, 2023

P.C. :-

1. By this petition the petitioner challenges order dated 2 September 2022 passed by the Ad-hoc District Judge 01, Satara rejecting the petitioners application for stay of the decree during pendency of the Regular Civil Suit no. 260 of 2012. The trial court has decreed the suit of the respondents/plaintiffs on 15 March 2022 interalia directing demolition of hut constructed by the defendant in the suit property.

Digitally signed
by
RAJESHWARI
RAMESH
PILLAI
Date:
2023.01.30
10:58:04
+0530

RAJESHWARI
RAMESH
PILLAI

2. The petitioner has preferred an appeal R.C.A. No. 60 of 2022 in the district court challenging decree of the trial court. The application for stay of the decree during pendency of the appeal has been rejected by impugned order dated 2 September 2022. The learned counsel for the petitioner submits that the trial court has granted relief in favour of the plaintiff which was not even sought for in the plaint. Inviting my attention to the prayers made in the plaint he would submit that the prayer was restricted to only demolition of the hut. There was no prayer for handing over possession thereof in favour of the plaintiff. Despite absence of prayer the trial court has proceeded to grant relief of handing over physical possession of the hut in favour of the plaintiff. Inviting my attention to the affidavit of evidence of the petitioner he would submit that after his mother's death, he came in possession of the suit property and that since the possession is proved the trial court ought not to have directed demolition of the hut for handing over its possession in favour of the plaintiff.

3. On the other hand, learned counsel appearing for the respondent opposes the petition and supports the order passed by the lower Appellate court

4. It appears that previously the plaintiffs had instituted Regular Civil Suit No. 233 of 2003 for injunction simplicitor to restrain defendant from interfering with the possession of the property on which the hut existed. That suit was decreed in favour of the plaintiffs. However since there was no prayer for demolition of the hut in that suit the plaintiff's were required to institute Regular Civil Suit No. 260 of 2012 which came to be decreed by judgment and order dated 15 March 2022.

5. The petitioner/defendant has not been able to prove the title to the property on which the hut is situated. In his affidavit of evidence he has repeatedly averred that he is not concerned with the suit hut in any manner. In these circumstances it is difficult to believe that the petitioner/defendant could be in lawful possession of the suit hut. The learned counsel for the petitioner has submitted that the petitioner has come in the possession of the suit hut after death of the mother. However his contention runs counter to the specific evidence adduced in the affidavit dated 9 June 2015 wherein the defendant repeatedly states that he is not concerned with the suit hut.

6. In the above circumstances there is no error on part of the lower Appellate court in rejecting the petitioner's application for stay during pendency of R.C.S No. 60 of 2022. The petition is devoid of merits.

7. The Writ Petition is dismissed without order as to costs.

(SANDEEP V. MARNE, J.)