



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

923 WRIT PETITION NO. 5143 OF 2022

Ramesh Kalya Gavit And Others

VERSUS

Jethya Divlya Gavit And Others

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Advocate for the Petitioner : Mr. Ruchir Subodh Wani

Advocate for Respondent No.1 : Mr. S. H. Tripathi h/f Mr. J. R. Shah

...

WITH

WRIT PETITION NO. 5144 OF 2022

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CORAM : R. M. JOSHI, J.

Dated : July 02, 2024

PER COURT :-

1. All respondents are duly served. Except respondent No.1, none appears, hence matter proceeded in their absence.
2. Heard. By consent of both sides, heard finally at the admission stage.
3. The petitioners filed suit bearing Regular Civil Suit No.10/2021 against the defendants seeking injunction in respect of Gut No.95 situated at Devlikhasfali Lakkadkot Tq. Nawapur Dist. Nandurbar. It is the claim of the petitioners that the said suit property is inherited by them from their ancestors. It is alleged that the defendants without any right, title and interest in the said suit property, are obstructing their possession, and hence, suit for injunction.
4. Respondents filed Regular Civil Suit No.21/2021 before the said Court seeking injunction against the petitioners herein restraining them

from causing interference in their possession over portion of Gut No.95.

5. Application Exhibit 23 filed in Regular Civil Suit No.10/2021 was rejected whereas application Exhibit 5 in Regular civil Suit No.21/2021 came to be allowed. Petitioners being aggrieved by the said orders filed Misc. Civil Appeal No.06/2021 and 07/2021. Both appeals were dismissed by the District Court by the impugned orders.

6. Learned Counsel for the petitioners submits that the learned Trial Court has rejected application filed by the petitioners for injunction essentially on the ground that the petitioners have failed to place any evidence on record indicating that Gut No.95 is formed of old Survey No.91/2 and 92/2. Now petitioners have placed on record before this Court the record of consolidation which according to the Counsel for the petitioners indicates that Gut No.95 consists of old Survey No.91/2 and 92/2, whereas Gut No.94 is from erstwhile Survey No.93/3 and 92/1. Thus, it is his contention that now since there is evidence available in order to substantiate the contention of the plaintiff, the order impugned be set aside with direction to the learned Trial Court to decide application Exhibit 23 in the suit filed by the petitioners and application Exhibit 5 in the suit filed by the respondents afresh.

7. Learned Counsel for respondents opposed the said contention by drawing the attention of the Court towards findings recorded by the learned Trial Court as well as by the District court in respect of the possession of the parties over the respective portion of Gut No.95. It is his submission that no interference is required to be caused in the said order.

8. Perusal of the order passed by the learned Trial Court indicates that the contention of the petitioners was rejected only on the ground that the petitioners have failed to prove that Gut No.95 is from erstwhile Gut No.91/2 and 92/2. Now since evidence is sought to be placed on record to that effect, it would be absolutely necessary that the said evidence is considered before passing any order on application Exhibit 23 and 5. This Court, therefore, of the view that it would be in the interest of the parties that the impugned orders are set aside with a direction to the learned Trial Court to decide application Exhibit 5 and 23 afresh after considering entire evidence placed before the Court. These applications be decided within six months.

9. Petitions stand disposed of in abovestated terms.

(R. M. JOSHI, J.)

vj gawade/-.