



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

**1000 WRIT PETITION NO. 1669 OF 2023**

**VISHWANATH SHAMRAO SHINGARE [MALI]  
& OTHERS**

**VERSUS**

**PARVATIBAI GOVINDRAO SHINGARE [MALI]**

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Advocate for the petitioners : Adv.R.R.Deshpande h/f.

Adv.P.R.Deshpande

Advocate for Respondent : Mr.N.B.Patil

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**CORAM : ARUN R. PEDNEKER, J.**

**DATE : 11.10.2024**

**P.C. :**

1] By the present petition, the petitioners challenge the impugned order dated 04.11.2022 passed by the District Judge, Latur in Misc. Civil Appeal No. 60/2018 whereby the order of trial Court dated 25.06.2018 allowing application for temporary injunction is upheld by the Appellate Court.

**Brief facts leading to filing the present petition are summarized as under :**

2] The respondent-plaintiff had instituted Regular Civil Suit No.148/1993 for maintenance. The said suit was

decreed on 24.07.1995. Thereafter, the plaintiff filed execution petition No. 45/1995. In the said execution petition, the matter was compromised between the plaintiff and Govind Shingare [Mai] and Govind handed over possession of 64 R. portion situated at Utti, Taluka Ausa, District Latur to the plaintiff as owner towards the maintenance. The said compromise was recorded on 18.01.2016 and the plaintiff become the owner and possessor of 64 R. portion out of Survey No.37. After receipt of possession of the plaintiff, there was an obstruction at the hands of the present defendants towards possession of the plaintiff's property. As such, the plaintiff filed Regular Civil Suit No.707/2017, seeking injunction against the present defendants. In the said suit, the application for injunction is allowed. Being aggrieved by the said order, the petitioners preferred Regular Civil Appeal No. 60/2018 and the District Judge, Latur dismissed the said appeal by order dated 04.01.2022. Against the said order, the present Writ Petition is filed.

3]           The learned counsel for the petitioners submits that the suit property is the joint family property. The husband of respondent, by name Govind, alone was not the exclusive owner and possessor of the suit land, therefore, the respondent had no occasion to get exclusive possession of the suit property. The respondent is only entitled to receive the share of her husband as the husband of the respondent was not exclusive in possession of the suit property. Therefore, the order of injunction passed by both the Courts below are erroneous.

4]           It appears that the plaintiff is in exclusive possession over the suit property by virtue of the settlement arrived between the plaintiff and her husband Govind in execution proceeding No.45/1995. Rukminbai Gore, sister of the defendants, objected the said settlement and objection was rejected and the Executing Court accepted the said settlement and handed over the possession of the suit property to the plaintiff. Thereafter, the defendants had also

filed an objection in Regular Darkhast on 25.09.2000 for exempting the suit property from attachment and from auction sale. The said application is not pressed by the defendants and the same was disposed of. The defendants also filed another application under Order 21 Rule 58 of the Civil Procedure Code in the execution petition and the defendants had not pressed the said application also. Thereafter, the defendants filed Misc. Civil Application No.17/2000 under order 21 Rule 58 of the Civil Procedure Code and the said application came to be dismissed for want of prosecution. Thereafter, the defendants instituted Regular Civil Suit No.35/2012 for perpetual injunction against the plaintiff and her brother and the said suit was also dismissed for want of prosecution by order dated 06.01.2016. The defendants filed various proceedings, which are not prosecuted by the defendants and that the earlier objections filed by the sister of the defendants and the same were also rejected and the plaintiff is held to be exclusive possession over the suit property. As such, findings recorded by both the Courts below are *prim facie*. I

do not see any error in the impugned order. The present Writ Petition is accordingly dismissed.

5]           However, the trial Court is directed to decide the pending suit, as expeditiously as possible, preferably within a period of 12 months from the date of production of the order of this Court. The parties to co-operate the Court in deciding the pending suit.

**[ARUN R. PEDNEKER]**  
**JUDGE**

DDC