

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.74 OF 2023

Lochanabai Bajirao Kamble

.. Petitioner

Versus

Tanaji Maruti Kamble and Anr.

.. Respondents

.....

- Mr. Sarang S. Aradhye a/w. Ms. Gauri Vejankar and Mr. Shantanu Gurav, Advocates for Petitioner.
- Ms. Pranali P. Railkar i./by Mr. Ajay A. Joshi, Advocate for Respondent No.1.
- Mr. Ashok B. Tajane a/w. Mr. Balaji P. Shinde and H. M. Khupsone, Advocates for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 10, 2024

P.C.:

1. Heard Mr. Aradhye, learned Advocate for Petitioner, Ms. Railkar, learned Advocate for Respondent No.1 and Mr. Tajane, learned Advocate for Respondent No.2.

2. The present Writ Petition impugns twin Exhibit “5” orders passed by learned Trial Court and District Court in Miscellaneous Civil Appeal whereby Application for injunction of the Plaintiff stands rejected. Suit is filed for simplicitor injunction. It is seen that primarily suit is filed on the basis of the title of Plaintiff.

3. Mr. Aradhye has drawn my attention to the observations in both orders, *inter alia*, observing and giving an imprimatur on the issue of possession of the suit property. He would submit that observations

with respect to possession hurt the Plaintiff's case. It is clarified that observations made in both the twin orders pertaining to possession are *prima facie* in nature and may have been expressed by both Courts below, but they shall not be countenanced for decision of the suit which shall entirely depend on the evidence that shall be led by parties. Parties are directed to lead affirmative evidence in respect of possession of property and the same shall be considered by the learned Trial Court while determining the suit proceedings.

4. Needless to state that contentions of Defendants are equally and expressly kept open on the issue of possession. Both parties shall be at liberty to lead appropriate and cogent evidence with respect to their case for determination of suit proceedings. Both the impugned orders are sustained. The learned Trial Court shall not be influenced by any observations and findings stated in the twin orders while determining the suit proceedings.

5. Suit is of the year 2020. Hence, learned Trial Court is directed to determine Regular Civil Suit No.385 of 2020 as expeditiously as possible and in any event within a period of eight months from today after hearing both the sides. Both parties are directed to co-operate with the learned Trial Court. Trial Court is directed not to give adjournments to the parties and to give adjournments only if they are utmost necessary due to any emergency

or exigency.

6. With the above directions, Writ Petition stands disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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by HARSHADA
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