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

WRIT PETITION NO. 1925 OF 2024

Vikas Baliram Dhodare

.. Petitioner

Versus

Kailas Baliram Dhodare

.. Respondent

-
- Mr. Rohit D. Joshi, Advocate for Petitioner.
 - Ms. Gauri Joglekar a/w. Ms. Shama Shekh i/by Meraki Legal for Respondent.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 14, 2024.

P.C.:

1. Heard Mr. Joshi, learned Advocate for Petitioner and Ms. Joglekar, learned Advocate for Respondent.

2. Present Writ Petition takes exception to the twin orders dated 26.06.2023 and 22.12.2023 passed in Exhibit “5” proceedings by the learned Trial Court and the Appellate Court. Both orders are in favour of giving interim protection of possession to the Plaintiff. Suit is filed by the Plaintiff who is Respondent before me seeking declaration in the year 2013.

3. It is an irony that for the last 10 years all that has progressed in the Suit is that order below Exhibit “5” is passed and challenged in the Appeal Court. The trial before the Trial Court is

proceeding practically *dedie in diem* in the meanwhile. This is the 11th year. The Suit land is ad-measuring 80 Gunthas and is a fertile land with cash crops. Naturally the parties who are real brothers have an affinity to get maximum yield out of the Suit land.

4. With the able assistance of Mr. Joshi and Ms. Joglekar, I have perused both the twin orders. After going through the orders what I find is that both the Courts have referred to the available documentary evidence placed on record by both the parties to return substantive *prima facie* findings of possession. Case of both parties incidentally is opposite to each other, hence despite hearing their submissions, I would desist from delineating and opining on the facts with respect to possession of the Suit land as also the number of the house structures on the Suit land about which there is disagreement. There is another contention raised by Petitioner that the Suit land is belonging to the Forest Department.

5. Be that as it may, findings are given on the basis of documentary evidence which do not enure to the benefit of the Defendant who is the Petitioner before me, but still I would desist from commenting upon the same in view of the impending trial. However, I wish to pass one order and that is do direct the learned Trial Court that while progressing with the trial and determining the Suit proceedings it shall not be swayed with or influenced with any of the findings

returned in the Exhibit “5” order as also the MCA order which are in my opinion *prima facie* findings and shall determine the Suit proceedings strictly in accordance with law on and the strength of the evidence of both the respective parties.

6. Needless to state that this Court though has upheld both the aforesaid two orders but has refrained from making any comment on the issue of facts stated therein and therefore this court has not opined on the merits of the case. MCA proceedings, if any, stand concluded. Parties are relegated to the Trial Court.

7. Both the learned Advocates would submit that Application seeking appointment of Court Commissioner has already been argued before the Trial Court and the order is expected soon.

8. Be that as it may, learned Trial Court shall now be seized with the present Suit proceedings. Considering that the Suit is almost 10 years old, learned Trial Court is requested by this Court to dispose of the pending Suit as expeditiously as possible and preferably within a period of six (6) months from today.

9. Both learned Advocates would submit that parties shall not take any unnecessary adjournments before the learned Trial Court and assist the Trial Court for expeditious disposal of the Suit within the aforementioned time frame as suggested and directed by this Court.

- 10.** All contentions of the parties are expressly kept open.
- 11.** With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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AJAY TRAMBAK
UGALMUGALE
Date: 2024.02.14
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