

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2564 OF 2023

Akkatai Maruit Gaikwad

.. Petitioner

Versus

Hanumant Shankar Borchate and Ors.

.. Respondents

.....

- Mr. Sandeep Shripad Koregave, Advocate for Petitioner.
- Ms. V. S. Nimbalkar, AGP for Respondent No.6.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 19, 2024

P.C.:

1. Heard Mr. Koregave, learned Advocate for Petitioner and Ms. Nimbalkar, learned AGP for Respondent No.6.

2. The present Writ Petition takes exception to the judgment dated 11.11.2020 passed by the learned District Judge No.3, Kolhapur which is at page No.64 of the Petition passed in Miscellaneous Civil Appeal No.63 of 2020.

3. Application of Petitioner – Plaintiff filed below Exhibit-5 in Regular Civil Suit No.476 of 2018 for temporary injunction under Order – XXXIX Rule 1 of the Civil Procedure Code, 1908 was rejected on 02.03.2020. Being faced with two concurrent orders the present Writ Petition is filed.

4. Subject suit property comprises of three Gat numbers namely Gat Nos.253, 371 and 372. Out of these, the subject suit

property which is the bone of contention between the parties is Gat No.371 which is ancestral property of the Plaintiff and Defendants admittedly. It is contended by the Plaintiff that she cultivated the suit properties and infact maintained the Defendants and the entire family.

5. Be that as it may, once parties agree that suit property is ancestral property and suit is for partition, without a trial, this Court at interim stage cannot pass any order for injunction since it is seen that parties to the suit properties are cultivating the suit property.

6. Mr. Koregave would submit that when the Writ Petition was heard earlier by this Court on 27.02.2023, this Court had opined that considering the suit being for partition at this stage no order can be passed for injuncting one or the other party and in the interest of justice to enure to the benefit of all parties it would be appropriate to pass a direction for disposal of the pending suit in a time bound manner. He would submit that order dated 27.02.2023 has been complied with and Respondents have been duly served. None of them appear despite being served.

7. In view of the above, interest of justice would be subserved if the learned Trial Court is directed to dispose of Regular Civil Suit No.476 of 2018 within a period of twelve months from today. I am also informed by Mr. Koregave that witness action is under progress before the Trial Court and in that view of the matter, it is impressed

upon the learned Trial Court not to be influenced with any observations made in this order, or the order dated 11.11.2020 passed in Miscellaneous Civil Appeal No.63 of 2020 and decide the pending Civil Suit between the parties strictly in accordance with law and within a period of twelve months from today.

8. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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