

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12577 OF 2022

Ramrao Pandu Shinde (since deceased) through
legal heirs Krishnat Ramrao Shinde and Ors. .. Petitioners

Versus

Ramchandra Dnyanu Shinde and Ors. .. Respondents

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- Mr. Nilesh Wable a/w. Ms. Stefy J. Dias i./by Mr. Umesh R. Mankapure, Advocates for Petitioners.
- Smt. M. S. Srivastava, AGP for Respondent Nos.2 to 5.
- None for Respondent No.1.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 03, 2024

P.C.:

1. Heard Mr. Wable, learned Advocate for Petitioners and Smt. Srivastava, learned AGP for Respondent Nos.2 to 5.

2. Respondent No.1 has been duly served as per bailiff report which is stated in the report of Registry dated 20.07.2023. It is seen that this Writ Petition is pending on record and file of the Court since December – 2022 and has repeatedly reached hearing on various dates. Hearing of the Writ Petition cannot be protracted any further. None appears for the contesting Respondent No.1 despite having been served.

3. On merits Mr. Wable, learned Advocate for Petitioners would draw my attention to the order passed in Application filed

below Exhibit-37 in Regular Civil Appeal No.18 of 2017. The decree of dismissal of Regular Civil Suit No.11 of 2009 has been passed by the Trial Court against which Appeal has been filed. While delineating and deciding the issues framed by the Trial Court, categorical finding has been returned by the learned Trial Court that Plaintiff is not in possession of the suit property. Such finding is clearly enumerated in the judgment dated 02.12.2016 passed by the learned Trial Court despite which in the pending appeal, Application has now been filed in 2022 by the Plaintiff seeking amendment to the suit plaint for introducing the prayer for possession. It needs to be mentioned that original suit plaint was filed for seeking relief of perpetual injunction to damages and other consequential reliefs in respect of suit properties namely Gat No.554 and Gat No.555 and other properties.

4. Once having failed in establishing declaratory title to the suit properties, the subsequent Application filed in the pending Appeal seeking relief of possession is nothing but a sheer abuse of the due process of law. All that the Respondent No.1 / Plaintiff can now do is to prosecute his Regular Civil Appeal No.18 of 2017 and nothing more. Such an application for introducing relief of possession is not maintainable at all.

5. By the impugned order dated 28.02.2022, the Application for amendment of the plaint to introduce the relief of seeking

possession of the suit property has been allowed and consequential directions have been given. The only reason that is ascribed to allow such an Application is because the Defendants have started construction on the suit property.

6. In that view of the matter, the remedy available to the Appellant i.e. original Plaintiff is to seek appropriate directions in Exhibit-5 proceedings before the Appeal Court. Hence, the reasons enumerated by the learned Appellate Court in allowing such an Application in paragraph No.27 cannot be countenanced and deserve to be rejected on the face of record. The entire order which is passed is nothing but an abuse of the due process of law and cannot be countenanced.

7. The Appellant has not filed application below Exhibit-5 in Regular Civil Appeal No.18 of 2017 and in that view of the matter, there can be no reason for him to be aggrieved for the reasons which is enumerated by the Appellate Court in paragraph No.27 of the impugned order. The entire order incidentally focuses on the issue of construction carried out by the Defendants. Without filing any application below Exhibit-5 in the pending Regular Civil Appeal No.18 of 2017 and filing the application below Exhibit-37 for introduction to a new relief of possession in the suit which has been comprehensively dismissed by the learned Trial Court is not permissible and cannot be

allowed.

8. The impugned order dated 28.02.2022 on the face of record is an ill-conceived order and deserves to be quashed and set aside. Hence, it is quashed and set aside. Regular Civil Appeal No.18 of 2017 is directed to be heard and disposed of by the learned Appellate Court as expeditiously as possible and in any event within a period of six months from today keeping all contentions of both the parties expressly open. Parties are directed not to take any unnecessary adjournments and co-operate with the learned Appellate Court. Appellate Court is directed to give adjournments only if they are utmost necessary and decide Regular Civil Appeal No.18 of 2017 strictly in accordance with law.

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

H. H. SAWANT

[MILIND N. JADHAV, J.]

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