

Amberkar

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

**WRIT PETITION NO. 7462 OF 2024**

Sunildatt Baburao Kalloli & Anr.

.. Petitioners

**Versus**

Shobha Chandrakant Kalloli & Ors.

.. Respondents

.....

- Mr. Bipin Joshi a/w Ms. Sakshi Agarwal for Petitioners
- Mr. Akil Ashok Kapade for Respondents

.....

**CORAM : MILIND N. JADHAV, J.**

**DATE : JUNE 12, 2024**

**P. C.:**

1. Heard Mr. Joshi, learned Advocate for Petitioners and Mr. Kapade, learned Advocate for Respondents.

2. Present Writ Petition takes exception to the twin orders dated 06.05.2023 and 28.11.2023 passed below Exh. 5 by the learned Trial Court and upheld by the learned District Court in MCA.

3. Mr. Joshi would submit that original Suit filed by the Plaintiffs (Respondents herein) seeks declaration in respect of the suit property on the ground of adverse possession and also perpetual injunction. By virtue of the impugned orders, injunction has been granted by the learned Trial Court during pendency of the suit proceeding.

4. I have perused both the impugned orders. *Prima facie*, I do not wish to delineate the facts and circumstances which have been raised

by Mr. Joshi while addressing me on the Writ Petition so as to opine on any of the issues. This is primarily because in a Suit filed for declaration on the basis of adverse possession, the Plaintiffs will have to step into the witness box and prove their case affirmatively and only upon discharging their said burden, Defendants (Petitioners herein) may or may not decide to lead evidence in rebuttal. Substitution of the *prima facie* opinion arrived at by both the Courts below cannot be an exercise which can be undertaken by this Court at an interim stage without trial. Relationship between the parties is also one of the aspect which has been noted by the learned Courts below as also a prior partition which had taken place of the ancestral property at an earlier point of time. However the effect of such issues on the Plaintiffs holding the suit property will have to be proved by the Plaintiffs since the plea is specifically based on adverse possession of the Plaintiffs. Needless to state that all contentions of both the parties will have to be kept open in the present Suit who may decide to lead appropriate evidence. Suit is filed in the year 2022. There is also another issue of the Will and the probate which has been agitated by the parties. The fact as to whether the suit property is ancestral property or self acquired property and / or who the said property derivated onto the respective parties and possession shall all be in question. Initial burden to prove the same is undoubtedly on the Plaintiff and in that view of

the matter, I do not wish to opine on any of the merits of the matter and substitute my views on the finds, rather *prima facie* findings returned by the learned Court below. Hence both the twin orders passed below Exh. 5 are sustained. However it is clarified that the learned Trial Court shall not be swayed by the observations and findings returned by the learned District Court upholding the Exh. 5 order since both the orders are sans the trial. Hence in the trial all contentions of the parties including the Defendants are expressly kept open.

5. I am informed by Mr. Joshi that issues have already been framed by the Trial Court. In the interest of justice, he therefore prays for the Suit to be expedited.

6. In view of the above observations and findings, learned Trial Court is requested and directed by this Court to dispose of RCS No. 169/2022 within a period of one year from today. Parties shall co-operate with the learned Trial Court and not seek any unnecessary adjournments unless absolutely necessary. Needless to state that all contentions of the parties are expressly kept open.

7. Learned Trial Court shall not be influenced by any of the observations and findings in both the impugned orders passed below

Exh. 5 and decide the Suit on its own merits strictly in accordance with law and the evidence led by the parties.

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

[ MILIND N. JADHAV, J. ]

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RAVINDRA MOHAN AMBERKAR  
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Date: 2024.06.13 10:50:23 +0530