

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10739 OF 2024

Surendra Ramdaur Yadav and Ors.

.. Petitioners

Versus

Urmila Prakash Thakur and Ors.

.. Respondents

-
- Mr. Pavan S. Patil a/w. Mr. Shubham Saraf, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 09, 2024

P.C.:

- 1.** Heard Mr. Patil, learned Advocate for Petitioners.
- 2.** The present Writ Petition takes exception to twin orders dated 07.11.2019 below Exhibit-5 in Regular Civil Suit No.914 of 2018 passed by the learned Trial Court and 02.01.2024 in Miscellaneous Civil Appeal No.64 of 2021 passed by the District Court. Defendants are Petitioners before me.
- 3.** Mr. Patil would submit that suit is nomenclatured as Regular Civil Suit No.914 of 2018 and filed for three specific reliefs namely removal of encroachment, removal of an iron gate and removal of bore well on the Suit property.
- 4.** He would submit that by virtue of the twin orders, private Defendants have been enjoined from creating third party rights until the disposal of the suit proceedings. He would submit that both the

Courts below have not taken cognizance of the private Defendants' principal objection namely that private Defendants are occupying only a part of the Sujit property admeasuring 600 sq.ft. out of entire larger suit property in their capacity as tenants.

5. Mr. Patil would submit that private Defendants are infact occupying a room admeasuring 600 sq.ft. since long and were inducted in the said room by the present Plaintiff. The Plaintiff admittedly is owner of the industrial estate rather the larger suit property in which the private Defendants' room is situated. It is the case of private Defendants that some time in the year 1960, Plaintiff herself let out the said room admeasuring 600 sq.ft. to the father of the Petitioners namely Ramdaur Magghu Yadav on rental basis.

6. Mr. Patil would next submit that Petitioners have been regularly paying the assessment and taxes for the said room from as far back as 1985 initially to the Gram Panchayat and subsequently to the Mira Bhayandar Municipal Council and thereafter to the Municipal Corporation. He would submit that the aforesaid evidence ought to have been considered as *prima facie* evidence which is overwhelming in the favour of Petitioners who are Defendants in the suit proceedings at the time of passing the order below Exhibit-5.

7. I have perused the order passed below Exhibit-5 and the pleadings with the able assistance of Mr. Patil. It is seen that suit filed

in the year 2018 is still pending. Both impugned orders are recording *prima facie* findings on the basis of pleadings and documentary evidence produced by the parties. There is one more issue raised by Mr. Patil with respect to the title of Plaintiff being only restricted to 2500 sq. yards instead of the area stated and depicted in the suit plaint i.e. 3200 sq.mtrs.

8. Be that as it may, there is assertion by the Plaintiff and denial by the Defendants and in that view of the matter, triable issues are raised. Considering that the suit is filed in the year 2018, I have impressed upon Mr. Patil that the right course of action would be to issue directions to the learned Trial Court to decide the suit proceedings expeditiously and strictly in accordance with law, without being influenced by the observations and findings returned in the twin Exh. 5 orders. This is suggested because it would be a futile exercise in attempting to appreciate the pleadings at this stage summarily and substitute the concurrent findings. Mr. Patil in his usual fairness would submit that he leaves it to the Court for passing an appropriate order in that case.

9. After hearing Mr. Patil and after perusing the pleadings, I am of the clear opinion that suit needs to be decided on the basis of triable issues which have been raised by both the parties. The opinion which has been expressed by the learned Trial Court while passing order

below Exhibit-5 as also by learned District Court in Miscellaneous Civil Appeal as also the observations made by me in this order shall not weigh with the Trial Court at the time of deciding the suit proceedings finally. Hence, while sustaining the twin Exh. 5 orders, the learned Trial Court is directed by this Court to decide Regular Civil Suit No.914 of 2018 as expeditiously as possible and in any event within a period of six months from today after hearing both the sides strictly on merits and the evidence led by Plaintiff and evidence in rebuttal led by Defendants. 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.

10. It is clarified that learned Trial Court shall not be influenced by any of the observations and findings returned in its order passed below Exhibit-5 and the order passed by the learned District Court in Miscellaneous Civil Appeal. All contentions of both the parties are expressly kept open.

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

H. H. SAWANT

[MILIND N. JADHAV, J.]

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