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

WRIT PETITION NO. 13220 OF 2024

Abasaheb Krushnat Patil

.. Petitioner

Versus

Pandurang Mahadev Yadav & Ors.

.. Respondents

Mr. Sarthak Diwan i/b. Mr. Panchshil V. Patil for Petitioner

Mr. Shantanu Patil a/w. Mr. Kunal Nalawade for the Respondent Nos. 1 & 3

CORAM : M. M. SATHAYE, J.

DATED : 14th FEBRUARY, 2025

P.C.:

1. Heard learned Counsel for the Parties. The Petitioner is the Defendant No. 2 and the contesting Respondent Nos. 1 to 3 are Original Plaintiffs.

2. The Petitioner is challenging the order dated 20/08/2024 passed in Misc. Civil Appeal No. 143 of 2023 by Dist. Judge-4, Kolhapur. By the said impugned order, the order passed by the Trial Court below Exhibit-5 in Regular Civil Suit No. 64 of 2021 dated 29/04/2023 is set aside and the Application Exhibit-5 is allowed, thereby restraining the Defendants from interfering in the alleged peaceful possession of the Plaintiffs over the suit land.

3. The learned Counsel for the Petitioner has pointed out as under. That the claim of the Respondents/Plaintiffs is based on alleged oral contract between the predecessors of the Plaintiffs and predecessors of the Defendants and further that in the 7/12 extract of the suit land, the name of

the predecessors of the Plaintiffs was appearing only from 2002 to 2014, and further that there is nothing to show that on the date of the suit, the Respondents/Plaintiffs were cultivating the suit land or they were in possession. It is submitted that the Trial Court after considering this, had dismissed the Application for interim injunction. That the Appellate Court *inter alia* has placed a kind of negative burden on the Defendants to show what kind of inquiry was conducted during the year 2014 and what order was passed for removing the name of the Plaintiffs or their predecessors. That in absence of any positive evidence about the Plaintiffs' possession, appeal has been allowed.

4. On the other hand, learned Counsel for the Respondents/Plaintiffs supported the impugned order. He submitted that even though their names appeared in revenue record till 2014, they were and are in possession of the suit land since the time of their predecessors on the basis of the oral agreement.

5. I have considered the rival submissions and perused the record.

6. The suit is filed simplicitor for injunction on the claim of oral contract between predecessors of parties. No declaration is sought. It is filed in 2021. The Trial Court had held that there is no prima facie evidence to suggest exact location/direction of 6 Are suit land. After hearing both the sides, this Court, by order dated 23/10/2024 has stayed part of the impugned order in respect of possession. It is informed that issues are already framed and the suit is ripe at the stage where evidence can start.

7. Considering the above circumstances and dates, nature of prayers and stage of the suit, in my opinion, no purpose will be served by entering the

merits of the rival claims. Since the impugned order is already stayed, though only regarding possession, in my view the following order will meet the ends of justice:

(a) The impugned order dated 20/08/2024 shall remain stayed during the pendency of the Suit.

(b) The suit shall be decided on its own merits and in accordance with law, without being influenced by the observations either in the impugned order dated 20/08/2024 or the order of the Trial Court dated 29/04/2023 below Exhibit-5 or this order. Rival contentions of both sides on merits are kept open.

(c) Considering that the suit is pending since 2021, hearing of the suit is expedited.

8. Writ Petition is disposed of in above terms with no order as to costs.

9. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)