

Wakodikar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.542 OF 2015

Shri.Raju Bala aadkite and others. Petitioners.

V/s.

Shri.Vishnu Atmaram Markad Respondent.

Mr.Vishwanath S.Talkute, Advocate for the Petitioners.

Mr.Rahul S.Kate, Advocate for Respondent.

CORAM : M. S. SONAK, J.

DATED : 30th APRIL, 2019.

P.C. :

1. Heard Mr.Talkute for the petitioners and Mr.Rahul Kate for the respondent.

2. Challenge in this petition is to the order dated 20/12/2014 made by the Appeal Court, the operative part of which reads as follows;

1. *Misc.Civil Appeal No.96/2012 is hereby allowed with costs.*

2. *The order passed by the trial court below Exh.5 dated 10/09/2012 in RCS No.174/2009 is hereby quashed and set aside.*

(1) The defendants are hereby temporarily from alienating the suit property by any mode or creating third party interest.

(2) The defendants further temporary restrained from interfering and obstructing into the possession of the plaintiff over the suit property,till the decision of suit bearing RCS No.174/2009.

4. *Copy of Judgment be sent to the trial court immediately.*

3. Mr.Talkute, Learned counsel for the petitioner, submits that the Trial Court had rejected injunction relying upon separate possession. He submits that the Appeal Court exceeds jurisdiction by making the impugned order. He submits that only reason given by them was that no reference of possession in agreement of sale, just because the same might have otherwise to be construed as conveyance. He submits that there is clear evidence otherwise to establish possession. Therefore, the Appeal Court exceeds jurisdiction in making the impugned order.

4. Mr.Rahul Kate defends the impugned order on the basis of reasonings reflected therein. He points out that from December, 2014 onwards, there is no interim protection in favour of the petitioners and now the suit is on the verge of disposal. He, therefore, submits that the petition may be dismissed.

5. According to me, there is no error in the view taken by the Appeal Court. As stated by Mr.Talkute for non-including the factum of alleged possession in the agreement for sale, is certainly not a ground in favour of the petitioners. The Appeal Court, on the basis of assessment of the material on record, has recorded a *prima facie* finding. From 20/12/2014 onwards, there is no interim protection available to the petitioners. The suit itself is at early advanced stage.

6. Therefore, considering all the aforesaid aspects, the interest of justice will be met if this petition to be dismissed, but the suit itself is ordered to be disposed of expeditiously without being influenced in any manner by any of the *prima facie* findings recorded either in the

impugned order or the order made by the Learned Trial Judge on 10/09/2012. Accordingly, this petition is dismissed, but the proceedings in the suit are ordered to be disposed of expeditiously, on its own merits and in accordance with the law, without being influenced by orders dated 10/09/2012, 20/12/2014 as well as the present order. The Learned Trial Judge to decide the suit on the basis of the evidence or being lead and by applying the necessary law as will be applicable in such matters.

7. Petition is disposed of in the aforesaid terms.

8. There shall be no order as to costs.

9. All concerned, to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)