

(2010) 09 BOM CK 0082

In the Bombay High Court

Case No : Writ Petition No. 6224 of 2009

Bhausahab Baliram Kadam and Others

APPELLANT

Vs

Ramkishan Baliram Kadam

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 09 BOM CK 0082

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : Vivek Bhavthankar, for the Appellant; Rajendra Deshmukh, for the Respondent

Final Decision : Allowed

Judgement

Shrihari P. Davare, J.—Rule. Rule made returnable forthwith and by consent of learned Counsel for the parties, petition is taken up for final hearing at the admission stage.

2. By present petition filed under Article 227 of the Constitution of Indian, the petitioners have prayed that the judgment and order dated 15.7.2009 passed by learned District Judge-2, Ambajogai on application (Exh.5) in Regular Civil Appeal No. 89 of 2008, be quashed and set aside, and the application for stay of execution of the impugned decree, filed in R.C.A. No. 89 of 2008 pending before Dist. Judge-2, Ambajogai, be allowed.

3. Respondent herein (original plaintiff) filed Regular Civil Suit No. 164 of 2000 in the court of Civil Judge, Junior Division, Ambajogai, against the present petitioners (original defendants) for decree of partition, separate possession and mesne profit in respect of the field Gat Nos. 332, 331, 111, 95, 21, 846 and 914 of village Chanai, and Gat No. 139 of village Daithana and house property bearing Gram Panchayat house No. 1207 (i.e. flat No. 37) of village Morewadi and lands Gat Nos. 114, 120, 236, 298 and 300 of village Chanai which are the

suit properties.

4. The Petitioners-defendants contested the said suit after filing appearance therein. The said suit came to be decreed partly, by learned Joint Civil Judge, Junior Division, Ambajogai, on 14.7.2008. Being aggrieved and dissatisfied by the said judgment and decree of the trial court, the defendants (present petitioners) preferred appeal, being Regular Civil Appeal No. 89 of 2008, before the District Court, Beed, on 20.8.2008. The petitioners-defendants also filed an application (Exh.5) in the said appeal, on 21.8.2008, for stay. However, the said application was rejected by the learned District Judge-2, Ambajogai, by order dated 15.7.2009. Being aggrieved and dissatisfied by the said order, petitioners-defendants have filed present writ petition, impugning the same.

5. After hearing learned Counsel for the parties at some length, Mr. R.S. Deshmukh, learned Counsel for the respondent-plaintiff, on instructions, made the statement that the respondent-plaintiff shall not file any execution proceedings against the petitioners herein during pendency of R.C.A. No. 89 of 2008 before the District Court. The said statement is accepted and taken on record.

6. However, Shri R.S. Deshmukh, learned Counsel for the respondent-plaintiff submitted that the decree has been passed for partition and separate possession and therefore, he apprehends that the petitioners-defendants, who are in possession of the suit properties, may alienate the same or create third party interest in respect of undivided share of the respondent-plaintiff therein. He, therefore, prays that the petitioners-defendants be restrained from doing the same, during pendency of the said R.C.A. No. 89 of 2008.

7. Apparently, R.C.A. No. 89 of 2008 since 2008, is pending before the learned District Judge-2, Ambajogai and, therefore, same needs to be expedited and considering rival submissions advanced on behalf of the parties, it needs to be directed that the parties shall maintain status-quo in respect of the suit properties till disposal of the said appeal, which would meet the ends of justice.

8. In the result, it is directed that the learned District Judge-2, Ambajogai shall decide R.C.A. No. 89 of 2008 expeditiously, and preferably within the period of six months from the date of receipt of writ from this Court and the parties are directed to maintain status quo in respect of the suit properties till disposal of the said R.C.A. No 89 of 2008 and fifteen days thereafter.

9. present Writ Petition is disposed of, accordingly. Rule is made absolute in aforesaid terms.