

(2011) 07 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 1261 of 2011

Tarachand Chandrasen @ Ramchandra Shinde and Another	APPELLANT
Vs	
Shakuntala Shankar Pimpalshende and Another	RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 6 BomCR 818

Hon'ble Judges : Savant R.M., J

Bench : Single Bench

Advocate : U.K. Bisen, for the Appellant; M.P. Kariya and Respondent No. 2 served, for the Respondent

Judgement

Savant R.M., J.—Rule, with the consent of the learned Counsel for the parties made returnable forthwith and heard.

2. The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 29/1/2011 passed by the learned District Judge-1, Chandrapur whereby the application for stay pending Appeal filed by the petitioners came to be rejected.

3. The petitioners had filed Regular Civil Suit No. 12/1997 for declaration and permanent injunction in respect of the suit property, which is an open plot. The said civil suit was dismissed on 18/11/2010 and while dismissing the said suit, the trial Court has recorded a finding that the petitioners have failed to prove their ownership and possession of the suit property. However, the issue No. 4, which was framed by the trial Court, and which was to the following effect:

4. Do the defendants prove that, the suit property is Abadi Land and defendants acquired title by adverse possession ?

The same was answered against the defendants, i.e. respondents herein.

4. It is an undisputed position that against refusal of temporary injunction by the

trial Court, the plaintiffs, i.e. petitioners herein had approached the appellate Court and the appellate Court by its order dated 23/8/2004 had directed the parties to maintain status quo pending the suit. Though the trial Court has held that the plaintiffs have not proved their possession, at the same time, the trial Court has also held that the defendants have failed to prove that the land is Abadi land and that they have become owners by the adverse possession. It is asserted by the learned Counsel for the petitioners that the petitioners/plaintiffs are in possession of the suit land.

5. In my view, considering the fact that the appeal filed by the petitioners, i.e. Regular Civil Appeal No. 195/2010 is pending and since there was an order of status quo in operation pending the suit, interest of justice would be served if the parties are directed to maintain status quo pending the decision of the appeal. The impugned order dated 29/ 1/2011 is, therefore, required to be set aside and is accordingly set aside and the same is substituted by the order of directing the parties to maintain status quo pending decision in Regular Civil Appeal No. 195/2010. The said appeal is directed to be heard and disposed of by 31st December 2011.

6. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.