

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 11682 OF 2014

Kiransing S/o Asaram Pal
& another

... Petitioners

VERSUS

Sunita W/o Arjun Doiphode
& others

... Respondents

.....
Mr. S.S. Thombre , Advocate for petitioners

.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 12th JANUARY, 2015

PER COURT :

1. I have heard the learned Advocate for the petitioners at length.

2. The petitioners have preferred R.C.S. No. 169 of 2012 seeking injunction against the defendants from causing obstruction and disturbing their lawful possession over land Gut No. 159 and 161 and the well situated in land Gut No. 160 at Village Bhardi, Tq. Ambad, Dist. Jalna.

3. By order dated 20-10-2012, the Trial Court rejected application Exhibit 5 filed by the petitioners seeking injunction to be clamped upon the defendants under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure. The petitioners preferred Misc. Civil Appeal No. 90 of 2012 and the same came to be dismissed by judgment and order dated 26-08-2014. This petition is preferred on 26-11-2014.

4. Grievance of the petitioners is that the defendants have no right to any share in the suit property and more so, the well at issue. The petitioners claimed to have purchased Gut No. 159 as well as Gut No. 161 with the share of the water in the well situated in Gut No. 160.

5. The petitioners, therefore, submits that the Trial Court had mis-directed itself and had considered the submissions of the defendants which were baseless and required no consideration.

6. The Appeal Court has in fact appreciated the case of the petitioners and should have clamped injunction against the defendants. However, instead of doing so, the Appeal Court has permitted the petitioners a right to use half of the water from the well situated in land Gut No. 160 for cultivating their land Gut No.

159 and 161. In doing so, the defendants were also permitted to use half share of water in the said well. The petitioners contend that the entire share of water ought to have been handed over to the petitioners. It is, therefore, submitted that both the impugned orders are unsustainable.

7. I have considered the submissions of the learned Advocate for the petitioners and have gone through the petition paper book.

8. The injunctory orders are in the nature of temporary orders. While passing such interlocutory orders, the Court has to consider a prima-facie case and the balance of convenience. Similarly, the Court has to consider whether clamping of an injunction is likely to cause an irreparable harm, manifest inconvenience and grave hardships to the defendants. Needless to state that, such orders are discretionary in nature. Such discretion has to be exercised judiciously and cannot be de-hors the available material to be appreciated at a prima-facie stage.

9. The Appeal Court has considered the record and noted that the petitioners are the owner of land Gut No. 159 and 161. The well is situated in land Gut No. 160. The defendants have made out a case as regards land Gut No. 160 and as such got the share

of water from the said well. I find that the Appellate Court, till the disposal of the R.C.S. No. 169 of 2012, has balanced equities and has ensured that the litigating parties are not made to suffer.

10. Rejection of application Exhibit 5 by the Trial Court has been rightly interfered with by the Appeal Court. Ends of Justice have thus been achieved by the judgment of the Appeal Court. These conclusions are drawn at the prima-facie stage and I do not find that the litigating parties are made to suffer an irreparable loss or grave hardships. I, therefore, do not find that the impugned judgment of the Appeal Court could be said to be perverse or erroneous so as to cause grave injustice to the petitioner.

11. As such, this petition sans merit and, therefore, is dismissed. The petitioners assure to cooperate with the Trial Court for the expeditious hearing of the matter. The said statement is accepted. Needless to state, while deciding the suit, the Trial Court shall not be influenced by any of the observations made by the Appeal Court or even this Court.

(**RAVINDRA V. GHUGE, J.**)