

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.839 OF 2015

Annasaheb S/o Tatyaba Palande,
Age-43 years, Occu-Agriculturist,
R/o.Rahata, Tq.Rahata, Dist.Ahmednagar

PETITIONER

VERSUS

1. Iqbal Kalubhai Shaikh,
R/o Rahata, Tq. Rahata, Dist.Ahmednagar,
Through Power of Attorney Holder,
Rajjak Bakshubhai Sayyad,
Age-Major, Occu-Business,
R/o Kanadgaon, Tq.Rahuri,
Dist.Ahmednagar
2. Arvind S/o Tatyaba Palande,
Age-46 years, Occu-Agriculturist,
3. Sham S/o Tatyaba Palande,
Age-36 years, Occu-Agriculturist,
4. Somnath S/o Tatyaba Palande,
Age-32 years, Occu-Agriculturist,
5. Shantabai w/o Tatyaba Palande,
Age-66 years, Occu-Agriculturist
and Household,
All No.1 to 5 R/o Rahata,
Tq.Rahata, Dist.Ahmednagar,
6. The State of Maharashtra,
through Collector, Ahmednagar,
7. The Tahsildar,
Rahata, Dist.Ahmednagar,
8. The Circle Officer,
Rahata, Dist.Ahmednagar,
9. The Police Inspector,

Rahata Police Station,
Dist. Ahmednagar.

RESPONDENT

Mr.S.S.Chapalgaonkar, Advocate for the petitioner.
Mr.P.R.Patil, Advocate for respondent No.1.
Mrs.S.D.Shelke, AGP for respondent Nos. 6 to 9.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 14/07/2015

ORAL JUDGMENT :

1. Rule.
2. Rule made returnable forthwith and heard finally by the consent of the parties.
3. The petitioner is aggrieved by the impugned judgment of the learned District Judge-1, Kopergaon in Misc.Civil Appeal No.66/2013 and the Cross Objections filed by the petitioner.
4. Since R.C.S.No.158/2013 is pending before the Trial Court, I am not going into the rival contentions of the parties, which touch the merits of the suit, at an interlocutory stage.
5. The petitioner is aggrieved by the communication dated 29/04/2013 issued by the Tahsildar, Rahata on an application made

by respondent No.1 and others dated 25/04/2013, which is addressed to the Police Inspector at Rahata. By the said communication, the Tahsildar has referred to the judgment of this Court and has directed the Police Inspector to ensure that there is sufficient police protection / *bandobast* apprehending disturbance in between the petitioner and the respondents herein, which is in connection with a “*Wahiwat*”.

6. The petitioner has preferred a R.C.S.No.158/2013 before the Trial Court claiming declaration as against the communication dated 29/04/2013 and perpetual injunction. An application for temporary injunction under Order 39 Rule 1 of the CPC has also been preferred below Exh.6. Specific averments and the nature of interim relief sought are set out in paragraph Nos. 8 and 9 of the said application.

7. An ad-interim order was passed by the Trial Court on 30/08/2013. By application Exh.34, the original defendant No.5 who is respondent No.1 herein, requested the Court to decide Exhibit 6. The Trial Court heard the parties on Exh.6 and Exh.34 and has passed an order dated 30/10/2013 directing the plaintiff as well as original defendant no.5 not to cause any interference or disturbance with regard to the suit property and their possession over the common

portion / joint possession. While issuing the said directions as a part of its injunctory order, the Trial Court concluded in paragraph No.7 that defendant No.5 has acquired the possession in view of the fact that his brother Munavar Shaikh was in possession of the suit property.

8. Defendant No.5 preferred Misc.Civil Appeal No.66/2013 challenging the temporary injunction order dated 10/10/2013. The petitioner preferred a Cross Objection praying for modification of the impugned order and further direction that application Exh.6 be allowed.

9. By judgment and order dated 27/03/2014, the Appeal Court quashed and set aside the impugned order of the Trial Court below Exh.6 and dismissed the application Exh.6 alongwith the Cross Objection filed by the plaintiff. The appeal of defendant No.5 was thus allowed.

10. Grievance of the petitioner is that several contentious issues are required to be gone into by the Trial Court. Defendant No.5 should not be given exclusive rights over the suit property since it would create further complications. He might also create third party

interest. As such, the claim put forth by the plaintiff while seeking declaration and injunction would be frustrated by the acts of defendant No.5.

11. He, therefore, submits that though the plaintiff had preferred a Cross Objection as a counter to the Appeal filed by the defendant, the order of the Trial Court dated 10/10/2013 is balanced and ensures that further complications by the acts of the parties are prevented. By the impugned judgment of the Appeal Court, the defendant is likely to misuse the same and is likely to create further complications with the intention of frustrating the suit filed by the plaintiff.

12. Mr.P.R.Patil, learned Advocate has appeared on behalf of respondent No.1. Respondent Nos. 2 to 5 are close relatives of the plaintiff, who have not chosen to cause an appearance despite being served.

13. Mr.Patil submits that even the Trial Court, in its observations in paragraph No.7 has concluded prima facie that defendant No.5 is in possession of the suit property and there is no issue as regards defendant Nos. 2 to 4, of handing over the possession to defendant No.5. It is also prima facie concluded that the petitioner plaintiff

could not establish that defendant No.5 is not in possession of the suit property.

14. Mr.Patil further submits that the Appeal Court has also considered this aspect and has concluded in paragraph No.9 and 10 that defendant No.5 has been put in possession. He alongwith his brothers Munavar and Siraj have purchased the land, which is standing in their name. Possession is also evident from the revenue record.

15. Mr.Patil indicates that the Appeal Court has finally concluded that police protection is being sought by defendant No.5 only with regard to the illegal activities of the plaintiff and defendant Nos. 6 to 9. If they maintain peace and tranquility, defendant No.5 is not required to seek any police protection. He has been isolated by the plaintiff and the defendants and is therefore under serious threat.

16. Considering the contentions of the learned Advocates and the observations of the Trial Court and the Appeal Court as stated above, I do not find any reason to cause an interference in the impugned judgment in view of the interlocutory stage in the matter. I do not find that the observations set out in the impugned judgment and the

rejection of application Exh.6 is likely to cause grave injustice to the petitioner so as to cause an interference in my supervisory jurisdiction, keeping in view the observations of the Apex Court in the case of Syed Yakoob Vs.K.S.Radhakrishnan and others, reported at AIR 1964 SC 477 and in the matter of Surya Dev Rai Vs. Ram Chander Rai, reported at 2003(6) SCC 682.

17. Needless to state, rejection of application Exh.6, would not entitle defendant No.5 to create a situation which would frustrate the claim preferred by the plaintiff. Mr.Patil, learned Advocate submits on instructions on behalf of defendant no.5 that third party interest would not be created in the suit property till the disposal of RCS No.158/2013.

18. Considering the statement made on behalf of respondent No.5 and my observations hereinabove, this petition is disposed of without causing any interference in the impugned judgment.

19. Rule is discharged. Pending Civil Application Nos.4191/2015 and 4192/2015, do not survive, hence disposed of.

(RAVINDRA V. GHUGE, J.)