

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.114 OF 2013
IN
SECOND APPEAL NO.47 OF 2013**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.S.P.Shetye for the applicant

Mr.PD.Dalvi for the respondent nos.1 and 2

CORAM : K.K.TATED, J.
DATED : 10/09/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by plaintiff for an order of injunction restraining the respondent plaintiff from disturbing his possession of the suit property i.e. Gat No.538 from village Tirapan, Tal. Panhala admeasuring 30R out of which northern side east west area of 20R alongwith farm house.
- 3 Applicant plaintiff filed Regular Civil Suit No.70 of 2003 in the court of Joint Civil Judge, Junior Division Panhala for an order of injunction restraining respondent defendant from disturbing his possession in respect of the suit property.
- 4 It was the case of the plaintiff that they

purchased the suit property by sale deed dated 20.6.1983 from one Yeshwant Bapu Jadhav and since then they were in possession of the suit property. He submits that as on today also, plaintiff is in possession of the suit property. He further submits that the Second Appeal filed by the plaintiff is already admitted by this court by order dated 5.12.2014. He submits that pending the hearing and final disposal of Second Appeal, this Hon'ble Court be pleased to restrain the respondent defendant from disturbing the plaintiff's possession in respect of 20R of land suit property. He submits that if injunction is not granted, irreparable loss and injury will be caused to the applicant. He submits that applicant has good chance of success in the present matter.

5 On the other hand, the learned counsel for the defendant vehemently opposed the present Civil Application. He submits that there is a concurrent finding of fact recorded by both the courts below. Hence, there is no question of granting any interim relief in favour of the plaintiff.

6 The learned counsel for the defendant filed Affidavit in reply dated 29.12.2014 to oppose the present Civil Application. The learned counsel for the defendant submits that defendant's father filed Special Civil Suit No.153 of 1982 for recovery of amount from Yeshwant Babu Jadhav. He submits

that the said suit was decreed by the Trial Court on 30.10.1984 and awarded to recover amount of Rs.33,320 with 6% interest against a person by name Yeshwant, owner of the suit property. He submits that thereafter defendant filed Special Darkhast No.67 of 1985 for execution of the decree. He submits that in that proceeding, the suit property was attached as per the provisions of Order 21 Rule 54 of the Civil Procedure Code, 1908. He submits that thereafter, the executing court after following due process of law, proclamation was issued for sale of the said property by auction. He submits that on 1.2.1989 the sale was confirmed and on 20.4.1989 the sale certificate was issued in favour of the defendant. He submits that pursuant to the said sale, the bailiff handed over the actual possession of the suit property to the defendant on 4.7.2003 by drawing the panchnama and possession receipt. He submits that since then, the defendant is in occupation, use and possession of the suit property as a owner. Hence, there is no question of granting injunction restraining the defendant from disturbing alleged possession of the plaintiff. He submits that both the courts below concurrently held that the plaintiff failed to prove his lawful possession of the suit property.

7 On the basis of these submissions the learned

counsel for the defendant submits that there is no substance in the present Civil Application and same is required to be dismissed with costs.

8 I have heard both the sides at length. It is to be noted that the present Second Appeal is already admitted by this court. In the present proceeding plaintiff purchased the suit property from owner by sale dated 20.6.1983 and since then he was in possession of the suit property. It is to be noted that though the defendant claimed that the bailiff handed over vacant and peaceful possession of the suit premises to him that cannot be relied at this stage. The defendant through his power of attorney holder in his cross-examination specifically admitted that the possession was not taken from the plaintiff. This itself shows that though panchnama was prepared by the bailiff in Execution Proceeding showing that the possession was handed over to the defendant but same was not done actually on the date of Execution Proceeding.

9 Considering this prima facie case, I am of the opinion that plaintiff has made out a case for allowing this application but at the same time in the interest of justice, plaintiff have to be restrained by an order of injunction by creating any third party right, title and interest in respect of the suit property till the hearing and final disposal

of the suit property. Hence, following order is passed:

- a) Respondent defendant is restrained by an order of injunction from disturbing the plaintiff's possession in respect of the suit property i.e. Gat No.538 from village Tirapan, Tal. Panhala which is totally admeasuring 30R out of which northern side east west area of 20R alongwith farm house. without following due process of law.
- b) Applicant plaintiff is also restrained by an order of injunction from creating any third party right, title and interest in respect of the suit property till the hearing and final disposal of the Second Appeal.
- c) Civil Application is disposed of accordingly.

(K.K.TATED, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.