

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

WRIT PETITION NO.1570 OF 2015

Gousmahammad Abdul Gani Shaikh : Petitioner.
Versus
Smt. Shrimanti Narayan Kaulapure and ors. : Respondents.

Mr. R M Momin for the Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 13th February 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 9/1/2015 passed by the learned Ad-hoc District Judge-3 Sangli by which order the Appeal filed by the Petitioner herein came to be dismissed and resultantly, the order dated 28/11/2014 passed by the Trial Court i.e. the learned 2nd Joint Civil Judge Junior Division, Miraj allowing the Application (Exhibit 5) for temporary injunction in Regular Civil Suit No.183 of 2014 came to be confirmed. Hence there are concurrent orders passed by the Courts below in favour of the Plaintiffs and against the Defendant.

2 The suit in question being Regular Civil suit No.183 of 2014 has been filed by the Plaintiffs for an injunction restraining the Defendant from interfering with their possession in the land bearing Revision Survey No.413/3 situated at Miraj City, District Sangli. It is the case of the Plaintiffs that the land was belonging to their grand-father one Pundlik Kaulapure who had

bequeathed the same in favour of the Plaintiff Nos.2 and 3 and that since at the time of the said bequest they are in continuous and settled possession of the said land. On the ground that the Defendant i.e. the Petitioner herein has started causing obstruction to the possession of the Plaintiffs by raising a dispute as to the boundary, that the Plaintiffs were required to file the suit in question for permanent injunction.

3 In the said suit, the Plaintiffs had filed an Application (Exhibit 5) for temporary injunction. The said Application was replied to on behalf of the Defendant. The case of the Defendant was that there was no cause of action to file the suit. The Defendant denied that he has obstructed the possession of the Plaintiffs. The Defendant has also challenged the title of the Plaintiff Nos.2 and 3 on the ground that the alleged Will of their grand-father was not produced. The Defendant also questioned the maintainability of the suit on the ground that the property has not been properly described. The parties in support of their respective assertions filed 7x12 extracts of their respective properties as well as the sale deeds. The Plaintiffs in addition have filed the bills of electricity and the photographs of the suit property to show that they are in possession.

4 The Trial Court considered the said Application (Exhibit 5) and by its order dated 28/11/2014 allowed the same. The Trial Court has adverted to

the fact that the Plaintiffs are in possession of 8 annas share in the said land bearing Revision Survey No.413/3 which is identifiable in view of the copy of the certified map produced by the Plaintiffs from the office of the Land Records wherein the boundaries of both the property of the Plaintiffs i.e. Revision Survey No.413/3 and the property of the Defendant i.e. Revision Survey No.413/2 are depicted.

5 Aggrieved by the order passed by the Trial Court allowing the Application (Exhibit 5) that the Defendant filed Misc. Civil Appeal No.202 of 2014. The Lower Appellate Court did not deem it appropriate to interfere with the order passed by the Trial Court. The Lower Appellate Court reiterated the findings of the Trial Court in so far as the description of the property is concerned. The Lower Appellate Court also adverted to the fact that there was no hurdle in interfering with the Application for injunction against the Defendant and that there was no merit in the contention of the Defendant that the property has not been properly described when the certified copy of the map from the office of the Land Records is filed on record by the Plaintiffs. The Lower Appellate Court held that the relief of injunction was required to be granted to the Plaintiffs as they are apprehending danger to their possession which is settled and long standing. As indicated above, the Lower Appellate Court has by its impugned order confirmed the findings of the Trial Court.

6 The learned counsel appearing on behalf of the Petitioner/Defendant Shri R M Momin would contend that the relief be modulated from one granting injunction to one directing the parties to maintain status quo.

7 In my view, the aforesaid contention of the learned counsel for the Petitioner/Defendant cannot be acceded to as both the Courts below have deemed it appropriate to grant the injunction as they have come to a conclusion that the Plaintiffs have made out a prima facie case of apprehension to their settled possession. In view of the fact that there are concurrent orders passed by the Courts below in favour of the Plaintiffs and against the Defendant, the interdiction of this Court in its writ jurisdiction is not warranted. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]