

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

WRIT PETITION NO.7137 OF 2014

Shri Dattatray Pandurang Pawar	]	
Age 86 years,1 Occ : Agri.	]	
R/o. Pawarwadi, Tal. Jawali,	]	
Dist. Satara	]	
Through his Power of Attorney Holder	]	
Rajendra Dattatraya Pawar	]	
Age 48 yrs., Occ : Agri/Business,	]	
R/at Plot No.35,	]	
City Survey No.467/7A/1,	]	... Petitioner
Utekar Nagar, Sadarbazar, Satara	]	(Org. Plaintiff)

versus

1]	Mahendra Namdeo Chorge	]	
	Age 38 yrs., Occ : Agri	]	
		]	
2	Anita Mahadeo Chorge	]	
	Age 33 yrs.	]	
		]	
	Occ : Agr. & Household,	]	
	Both R/o. Ashwini Colony	]	
	Golibar Maidan, Godoli	]	
		]	
3]	Shankar dinkar Sakhare	]	
	Age 42 yrs., Occ : Agri	]	
		]	
4]	Bharat Dinkar Sakhare	]	... Respondents.
	Age 37 yrs. Occ : Agri.	]	(Respondent Nos.1 & 2 -
		]	Org.Defendant Nos.4 &5.
5]	Chandrakant Dinkar Sakhare	]	Respondent Nos.3 to 5 -
	Age 33 yrs. Occ : Agri.	]	Org. Defendant Nos.1 to3)
	Nos. 3 to 5 R/o. Narafdeo	]	
	Tal. Jaoli, Dist. Satara.	]	

Mr. P B Shah i/by Mr. Kayval P Shah for the Petitioner.
Mr. V S Talkute for the Respondent Nos.1 and 2.

CORAM : R. M. SAVANT, J.
DATE : 14th January 2015

ORAL JUDGMENT

1 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The order dated 18/2/2014 passed by the learned District Judge-3 Satara thereby allowing the Appeal being Misc. Civil Appeal No.103 of 2012 and consequentially setting aside the order dated 2/5/2012 passed by the Trial Court i.e. the learned Civil Judge, Junior Division, Medha allowing Application (Exhibit 5) is taken exception to by way of the above Petition.

2 The Petitioner is the original Plaintiff whereas the Respondent Nos.1 and 2 are the purchasers from the other Respondents who are the original owners. It is not necessary to dilate further on facts, having regard to the final order that is to be passed in the above Petition. Suffice it to say that the Trial Court taking into consideration the material on record i.e. the documents produced by the Plaintiff as well as the Defendants 4 and 5 who as indicated above are the purchasers came to a conclusion that the Plaintiff has made out a case for exercise of discretion and has accordingly allowed the Application (Exhibit 5) for temporary injunction subject to the bond being

executed by the Plaintiff. The Trial Court by its order dated 2/5/2012, restrained the Defendant Nos.4 and 5 who are the Respondent Nos.1 and 2 herein from obstructing the Plaintiff in the enjoyment and possession of the suit property.

3 The said order dated 2/5/2012 was carried in Appeal by the Defendants. The Lower Appellate Court, by the impugned order, has allowed the Misc. Civil Appeal No.103 of 2012 and has set aside the order dated 2/5/2012. A reading of the order passed by the Lower Appellate Court discloses that the Lower Appellate Court has not considered the matter in the manner it is required to be considered by the Appellate Court in view of the mandate of Order XLI of the Code of Civil Procedure. It is well settled that if the Lower Appellate Court does not agree with the findings recorded by the Trial Court granting temporary injunction, the Lower Appellate Court has to set out the reasons as to why it does not agree with the findings arrived at by the Trial Court. However, in the instant case, as indicated above, the Lower Appellate Court only on the basis of a singular fact relating to the affidavits filed by the adjoining land owners has held that the Plaintiff has not made out a case for injunction and therefore the Trial Court has erred in granting injunction. As indicated herein above, the Plaintiff and the Defendants have filed number of documents in support of their assertions on the basis of which the Trial Court had recorded its findings. The Lower Appellate Court, as can be

seen from the impugned order, has not adverted to the said material, apart from that as indicated herein above the Lower Appellate Court has also not recorded a finding as to how the findings of the Trial Court have been erroneously arrived at on the basis of the said documents. In my view, therefore, the order passed by the Lower Appellate Court cannot be sustained.

4 When faced with the said situation, Shri V S Talkute, the learned counsel appearing on behalf of the Respondents herein i.e. the original Defendants who had filed the Appeal in the Lower Appellate Court, on instructions, makes a statement that the Respondents i.e. the original Defendants have no objection if the impugned order is set aside and the matter is relegated back to the Lower Appellate Court for a de-novo consideration of the Appeal. In view of the said statement made by the learned counsel for the Respondents – original Defendants, there is no warrant for this Court to give detailed reasons for setting aside the impugned order. The impugned order dated 18/2/2014 is accordingly quashed and set aside. The Appeal in question i.e. Misc. Civil Appeal No.103 of 2012 is relegated back to the Lower Appellate Court for its de-novo consideration. Needless to state that the Appeal in question would be considered on its own merits and in accordance with law. The Lower Appellate Court whilst considering the said Appeal would bear in mind the observations made in the instant order. The parties to appear before the Lower Appellate Court on 28/01/2015 at 2.30 pm with a copy of the

instant order. The Lower Appellate Court thereafter to decide the said Appeal latest by 15/03/2015. The order of status quo which was granted by the Lower Appellate Court vide order dated 22/06/2012 and which was in operation during pendency of the Appeal would continue to operate till the Appeal in question is disposed of. The above Writ Petition is accordingly allowed. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]