

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

WRIT PETITION NO.5397 OF 2014

Ghodawat Industries Pvt. Ltd

Managing Director

Shri Sanjay Danchand Ghodawat

Through Authorized signatory

Shri Madan Ghatge

: Petitioner

versus

Ramchandra Ganpati Khanaj

: Respondent.

Mr. P B Bhargude for the Petitioner.

Mr. S R Ganbavale for the Respondent.

CORAM : R. M. SAVANT, J.

DATE : 26th October 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 16/04/2014 passed by the learned District Judge-1 Ichalkaranji by which order the Appeal filed by the Petitioner came to dismissed and resultantly the order dated 30/12/2013 passed by the Trial Court allowing the application for temporary injunction filed by the Respondent Plaintiff came to be confirmed. There is therefore a concurrent finding recorded by both the Courts below that the Respondent Plaintiff is entitled to the discretionary relief of temporary injunction.

2 The dispute in question is revolving around the poultry shed which is existing on 5 Ares of land in Gat No.57. The said land bearing Gat No.57

was owned by the Plaintiff and his brothers Shri Pandurang, Krishna, Mahadeo, Vishnu and Laxman. The said land totally admeasures 7 Hector 44 Ares i.e. 74400 sq.mtrs. The Plaintiff and his brothers had 2 Anna 8 pai share each in the said land. It appears that parts of the said land came to be sold from time to time and ultimately the Petitioner herein had purchased 60114 sq.mtrs from Doshi and Shah family by the sale deed dated 05/02/1998. Out of the said land the Petitioner sold 480 sq.mtrs to one Dinkar Unune and the balance area remaining with the Petitioner is therefore 59634 sq.mtrs. It is not necessary at this stage to go into the aspect as regards the land handed over to the Municipal Council. The Plaintiff i.e. the Respondent herein in the said shed, which was on 5 Ares of land, was carrying on the business of poultry. On the Petitioner herein submitting a lay out plan to the Municipal Council, the Municipal Council on 07/01/2011 informed the Plaintiff that no land of the Plaintiff is in balance as per 7x12 extract. It was the case of the Plaintiff that on 29/01/2011, 40 to 50 persons owing allegiance to the Petitioner i.e. the Defendant in suit came on the suit site and tried to remove the poultry shed. The Plaintiff in view of the said act of the Defendant approached the local police but no action was taken by the local police. It is the case of the Plaintiff that the Defendant has no right or concern with the suit property and was trying to dispossess the Plaintiff from the suit property forcibly. The aforesaid facts constrained the Plaintiff to file the suit in question claiming permanent injunction thereby restraining the Defendant from causing obstruction to his

possession over the suit property and from demolishing the poultry shed.

3 In the said suit, the Plaintiff filed an application for temporary injunction seeking the relief that the Defendant should be restrained from causing obstruction to the Plaintiff's possession over the suit property and for removing the poultry shed till final disposal of the suit.

4 The Defendant i.e. the Petitioner herein filed written statement as also the reply to the application for temporary injunction. The Defendant claims his ownership on the basis of the sale deed executed by the said Joshi and Shah family, who in turn has purchased it from the brothers of the Plaintiff. The Defendant also adverted to the fact that the Plaintiff and his brothers are handed over the possession of 12588 sq.mtrs to the Municipal Council. It was the case of the Defendant that in so far as the shed is concerned, the Plaintiff has not reserved his right while selling the land as per the sale deeds Sr.No.50 to 55. It was the case of the Defendant that the Plaintiff was not in possession of the suit property and therefore by misrepresenting facts that he has filed the suit in question.

5 The Trial Court considered the said application (Exhibit 5) and taking into consideration the various sale deeds which were executed by the Plaintiff and his brothers in respect of the land out of the said Gat No.57 and

also taking into consideration the sale deed executed by the Plaintiff as also the land sold to the Municipal Council and area of 1698 remains in the land Gat No.57, observed that the Plaintiff has constructed the said poultry shed by obtaining permission of the Municipal Council and that he is in possession of the said poultry shed. The Trial Court was therefore of the view that the Plaintiff has made out a prima facie case and that the balance of convenience is also in his favour. The Trial Court adverted to the fact that in the sale deed executed by Mohan Doshi in favour of the Defendant dated 05/02/1998 it is not mentioned that the land including the area of the poultry shed has been sold to the Defendant. The Trial Court on the said basis held that the at the said stage it is very difficult to accept that the Defendant had purchased the land including the suit property i.e. the poultry shed. The Trial Court accordingly by its order dated 30/12/2013 allowed the application for temporary injunction.

6 The Defendant i.e. the Petitioner herein aggrieved ;by the said order dated 30/12/2013 carried the matter in appeal by way of Misc. Civil Appeal No.10 of 2014. The Lower Appellate Court on re-appreciation of the material on record did not deem it appropriate to interfere with the discretion exercised by the Trial Court, and accordingly dismissed the Appeal. The Lower Appellate Court also reiterated the findings of the Trial Court that the Plaintiff is in possession of the poultry shed. The Lower Appellate Court accordingly by

the impugned order dated 16/04/2014 dismissed the Appeal.

7 The learned counsel for the Petitioner i.e. the original Defendant made attempts to show that the orders passed by the Courts below were erroneous having regard to the sale deeds which were executed by the Plaintiff and his brothers in favour of Doshi and Shah family and also taking into consideration the land handed over to the Municipal Council. The learned counsel for the Petitioner Shri Bargude by relying upon a chart showing the sales effected by the Plaintiff and his brothers would contend that after the said sale deeds were executed no land is remaining with the Plaintiff.

8 As indicated above, both the Courts below have taken into consideration the extent of the lands sold from time to time by the Plaintiff and his brothers and having regard to the fact that there is no mention of the area comprising the poultry shed being sold to the purchaser from them have arrived at a conclusion that the Plaintiff is in possession of the said poultry shed. Even assuming for the sake of arguments that mathematically after the sales have been effected by the Plaintiff and his brothers, no land remains with the Plaintiff, in that event the Plaintiff can at the highest be said to be in illegal possession of the area of 5 Ares of land on which the said poultry shed is standing and for which the Defendant would obviously have to adopt due process of law if he wants to evict the Plaintiff. Hence at the prima facie stage

the view taken by the Courts below cannot be said to be a view which could not have been taken in the facts and circumstances of the case. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]