

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

WRIT PETITION NO.7087 OF 2014

Shri. Nagnath Dashrath Jamadade and others .. Petitioners

Versus

Shri. Prakash Balu Shinde and others .. Respondents

Shri. S. A. Ghaisas i/by Shri. A. M. Joshi, for the Petitioners.

Shri. Nitin P. Dalvi, for the Respondent Nos.1 and 2.

CORAM : R.M. SAVANT, J.

DATE : 23rd OCTOBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 08.01.2014 passed by the Learned District Judge-II, Solapur, by which order the Appeal filed by the Respondent Nos.1 and 2 herein i.e. original Plaintiffs being Misc. Civil Appeal No.111 of 2013 came to be allowed, resultantly the order dated 01.07.2013 passed by the Trial Court i.e. Learned Civil Judge Junior Division, Mohol, rejecting the application for temporary injunction filed by the Respondent Nos.1 and 2 came to be set aside and in turn injunction came to be granted to the Plaintiffs.

2. As indicated above, the Respondent Nos.1 and 2 are the original Plaintiffs and Petitioners are original Defendant Nos.1 to 4. The

Defendant No.4 is the widow of one Dashrath Jamadade who was the original owner of the lands in question. The subject matter of the suit which is filed for simplicitor injunction by the Plaintiffs is land bearing Gat No.32/1 to 3. The Plaintiffs were constrained to file a suit as according to them the Petitioners herein i.e. Defendant Nos.1 to 4 were obstructing their possession. The Plaintiffs lay a claim to the said suit property on the basis of three Sale Deeds executed by the Defendant Nos.5 to 7 who are the sisters of the Defendant No.1 Nagnath Jamadade. It is the case of the Plaintiffs that it is pursuant to the registered Sale Deeds executed on 22.04.2009 they have been put in possession and they have their house structure, wherein they are residing in the said land. In the said suit, the Plaintiffs filed an application for temporary injunction. The said application was opposed to on behalf of the Petitioners by contending that the suit property is as yet undivided and therefore, the Defendant Nos.5 to 7 could not have sold the suit property to the Plaintiffs. In the Trial Court, the Plaintiffs had not produced the Sale Deeds dated 22.04.2009 the Trial Court took into consideration the setting aside of the Mutation Entries effected in the name of the Plaintiffs and resultantly, the Trial Court negated the contention of the Plaintiffs that they were in possession and therefore held that the Plaintiffs have not made out prima-facie case, the balance of convenience was also not in their favour and irreparable loss

would not be caused to the Plaintiffs if the application for temporary injunction is rejected. The Trial Court has accordingly by its order dated 01.07.2013 rejected the application for temporary injunction.

3. The Plaintiffs carried the matter in Appeal by way of Misc. Civil Appeal No.111 of 2013. At the appellate stage, the Plaintiffs produced the documents in question i.e. registered Sale Deeds dated 22.04.2009 executed by the Defendant Nos.5 to 7 in their favour. The Lower Appellate Court having regard to the material on record observed that the original Gat No.32 was partitioned by the Defendant No.1 Nagnath Jamadade pursuant to which the Gat No.32/1 to 3 came to the share of Defendant Nos.5 to 7 and the said Defendants have accordingly executed Sale Deeds in favour of the Plaintiffs and handed over possession to the Plaintiffs. The Lower Appellate Court therefore held that the Defendant Nos.1 to 3 have not produced any cogent material to rebut the presumption which arises on account of the names of the Plaintiffs being entered in the 7/12 extracts in respect of the suit properties, though they were later on set aside. The Lower Appellate Court was of the view that though the Mutation Entries were not set aside the fact that the Plaintiffs were in possession could not be denied. In so far as the Defendant No.4 i.e. Petitioner No.4 herein is concerned, she has filed Regular Civil Suit No.72 of 2009 seeking partition of the suit properties and possession. The

relief sought in the said suit therefore is a pointer to the fact that it is the Plaintiffs who are in possession. The Trial Court as indicated above had rejected the application on the ground that the Plaintiffs have not produced material to indicate their possession, and that the Mutation Entries in favour of the Plaintiffs were set aside. The Trial Court also placed reliance on the fact that the Defendant No.4 i.e. Petitioner having filed a suit for partition and possession. In my view, having regard to the reasons which are mentioned by the Lower Appellate Court in the impugned order which reasons revolve around the possession of the Plaintiffs, the Lower Appellate Court can be said to have upset the order passed by the Trial Court for cogent reasons. The Learned Counsel appearing for the Respondent Nos.1 and 2 herein i.e. original Plaintiffs Shri. Nitin P. Dalvi points out that the suit is now kept for recording of evidence and is therefore likely to be disposed of in the near future. In that view of the matter having regard to the reasons mentioned by the Lower Appellate Court for upsetting the order passed by the Trial Court, the order passed by the Lower Appellate Court does not suffer from any error of jurisdiction or any infirmity or illegality for this Court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]