

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

WRIT PETITION STAMP NO.23054 OF 2014

Ramchandra Yesaba Narvekar : Petitioner
versus
Chairman – Sadashivrao Mandalik
Kagal, Taluka Sahakari Sakhar Karkhana Ltd
Hamidwada-Kaoulage, Tal. Kagal and ors. : Respondents.

Mr. Abhijit A Desai for the Petitioner
Mr. Amit B Borkar for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 02nd February 2015

P.C.

1 The writ jurisdiction of this court is invoked against the order dated 7/7/2014 passed by the learned District Judge-2, Kolhapur by which order the Appeal being Misc. Civil Appeal No.167 of 2013 filed by the Respondent Nos.1 and 2 herein came to be allowed and resultantly, the order dated 11/7/2013 passed by the Trial Court i.e. the learned Civil Judge, Junior Division, Kagal allowing the Application (Exhibit 5) came to be set aside and the Application in turn came to be rejected.

2 The Petitioner herein is the original Plaintiff who has filed the suit in question for injunction restraining the Defendants from interfering with his possession. The Plaintiff, Defendant No.4 one Babu Yesaba Narvekar and Defendant No.1's father one Balu Narvekar were having 8 Anna share in the

suit land i.e. Gat No.217, and the remaining 8 Anna share was that of the Mangale's and Khaire's in the said land. The Respondent Nos.1 and 2 herein are the original Defendant Nos.2 and 3 who purchased the 8 Anna share of the Mangle's and Khaire's. The Defendant Nos.2 and 3 also purchased the share of the Defendant No.-1's father one Balu Narvekar by a registered sale deed dated 1/2/1999. Hence what remained was the Plaintiff's share of 2 Anna 8 pai in the suit land being Gat No.217 total admeasuring 1 Hector 72 Ares situated at village Hamidwada, Tal. Kagal, Dist. Kolhapur. In the plan attached to the plaint the Plaintiff has shown the location of his 2 Anna 8 pai share. The cause for filing of the suit was the alleged obstruction by the Defendant Nos.2 and 3 to the Plaintiff's possession of the suit land. It is the case of the Plaintiff that the Defendant Nos. 2 and 3 have shown some false boundaries whilst purchasing the land from the father of the Defendant No.1 Balu Narvekar by sale deed dated 1/2/1999. The cause of action for filing the suit was also the apprehension that the Defendant Nos.2 and 3 would raise the construction over the suit land and therefore the suit was filed for injunction restraining the Defendant Nos.1 to 4 from causing any obstruction to the peaceful possession of the Plaintiff as also for restraining them from putting up the construction.

3 The Defendant Nos.1 and 3 filed their Written Statement and replies to the said Application for temporary injunction. They denied the factum of the Plaintiff's actual possession over the suit land. They questioned

the description of the suit property on the ground that it is vague and that there is no base to believe that the location of the Plaintiff's land is as depicted in the map. It is their case that the Defendant Nos.2 and 3 have purchased 2.8 pai share in the Gat No.217 from its original owner i.e. the father of the Defendant No.1 on 1/2/1999 with specific boundaries of their share are mentioned. It is their case that the Plaintiff has nothing to do with the said land purchased by them. It is their case that they have planted coconut trees in the suit land in the year 2006.

4 The Trial Court considered the said Application (Exhibit 5) and has by its order dated 11/7/2013 allowed the same. The Trial Court adverted to the fact that there is a strong possibility that an oral partition has taken place between the parties i.e. between the Plaintiff and his brothers and that the said 8 Anna share was partitioned in three strips running from South to North and that on southern boundary was the Nipani Murgud Road. The Trial Court observed that the Defendants have not mentioned as to how the Plaintiff is accessing his property or which way is available to the Plaintiff for approaching the road. The Trial Court however principally on the ground that it would be natural whilst partitioning the property to keep the access to the main road held that the Plaintiff had made out a prima facie case for the grant of injunction and has accordingly allowed the said Application (Exhibit 5).

5 The aggrieved Defendant Nos.2 and 3 carried the matter by way of Appeal being Misc. Civil Appeal No.167 of 2013. The Lower Appellate Court on a re-appreciation of the material on record came to a conclusion that the Trial Court had erred in exercising the discretion in favour of the Plaintiff. The Lower Appellate Court adverted to the 7x12 extracts of the suit land wherein the entries have been made on Annewari (in terms of “annas”) basis and therefore came to a conclusion that the said entries do not reflect that they are made on the basis of partition. The Lower Appellate Court observed that on the other hand the Defendant Nos.2 and 3 have a registered sale deed dated 1/2/1999 in their favour by which the father of the Defendant No.1 Balu Narvekar had sold his 2 Anna 8 pai share in favour of the Defendant Nos.2 and 3 by showing specific boundaries and that the effect of the said sale deed was given in 7x12 extracts in the year 1999 and ever since thereafter. The Lower Appellate Court also adverted to the fact that the Plaintiff had not raised any objection in respect of the said sale deed and the boundaries mentioned therein. The Lower Appellate Court held that in view of the registered sale deed, the same gave rise to a presumption. The Lower Appellate Court has also observed that the Plaintiff has not mentioned that the Defendant Nos.2 and 3 are going to raise construction in the suit land. The Lower Appellate Court was of the view that the Plaintiff could not prove his actual possession in respect of his share in the said suit land and the obstruction at the hands of the Defendant Nos.2 and 3. The Lower Appellate Court therefore observed that the

Trial Court has wrongly cast burden on the Defendants to prove certain facts when it was for the Plaintiff who was seeking temporary injunction to prove the said facts. The Lower Appellate Court has therefore for cogent reasons deemed it appropriate to interfere with the discretion exercised by the Trial Court. The Lower Appellate Court has by the impugned order accordingly allowed the said Appeal filed by the Defendant Nos.2 and 3 and set aside the order passed by the Trial Court.

6 The learned counsel appearing on behalf of the Petitioner original Plaintiff would contend that the Defendant Nos.2 and 3 are putting up compound wall around their property which would have an effect of interfering with the easementary right of the Plaintiff in the matter of approaching the Nipani Murgud Highway. The learned counsel would contend that the factum of oral partition is accepted by the Defendant Nos.2 and 3 and therefore, the Plaintiff cannot be deprived of accessing the Nipani Murgud Highway.

7 In my view, it is not possible to accept the said contentions as the said contentions were not the basis on which the Application for temporary injunction was adjudicated as also the same was not the defence raised in the Appeal. In fact in the entire plaint there is no mention of any easementary right of the Plaintiff being affected and the suit as indicated above has been

filed simplicitor for injunction restraining the Defendants from interfering with the Plaintiff's possession and/or putting up the construction. Even the nature of the construction that was proposed was not mentioned in the plaint. Since the Courts below have adjudicated upon the Application for temporary injunction on the basis of the facts which were appearing before them, the order passed by the Lower Appellate Court setting aside the order passed by the Trial Court granting temporary injunction does not suffer from any error of jurisdiction or any other illegality or infirmity for this Court to interfere in its writ jurisdiction. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]