

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

WRIT PETITION NO.673 OF 2015

Shri. Popat Tatyaba Dhamdhare

.. Petitioner

Versus

Shri. Vishnupant Tatyaba Dhamdhare

and others

.. Respondents

**Mr. P. S. Dani, Senior Advocate a/w Mr. Vilas B. Tapkir, for the
Petitioner.**

Mr. Rohit Gangawane a/w Mr. Rahul Kashi, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 17th FEBRUARY, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 22.12.2014 passed by the Learned Adhoc District Judge-3, Pune, by which order the Misc. Civil Appeal No.451 of 2014 came to be dismissed and resultantly the order dated 10.12.2014 passed by the Learned Joint Civil Judge, Junior Division Ghodnadi (Shirur), District-Pune rejecting the application Exh.5 in Regular Civil Suit No.320 of 2014 came to be confirmed.

2. The Petition also takes exception to the order dated 05.01.2015 passed by the same Learned Judge whereby the Police aid was

directed to be granted to the Defendant to close the channels and open the valves of the pipeline which have been closed by the Plaintiff.

3. The suit in question being Regular Civil Suit No.320 of 2014 has been filed by the Petitioner/original Plaintiff for a declaration that he is having half share in the 5 inches PVC pipeline which is running 14000 ft. in length as also 4 inches PVC pipeline which is running 2000 ft. in length and share in the 10 HP electric motor and electric connection installed in the suit property and that perpetual injunction restraining the Defendants from causing obstruction to his use, enjoyment of taking water to the extent of one half share through the pipeline. It is the case of the Plaintiff that the lands which are mentioned in paragraph 1 of the plaint are ancestral properties and have been partitioned between the Plaintiff and the Defendants 30 to 40 years back. In so far as the Plaintiff is concerned, in the said partition land bearing Gat No.2533 and 2538 have come to his share. In so far as Defendant No.1 is concerned, the land bearing Gat No.2512 has come to his share. It is the case of the Plaintiff that though the parties are in possession of their respective shares out of the ancestral properties, the Plaintiff has contributed to the laying of the pipeline and therefore is entitled to half share to the water being drawn from the pipeline from the Bhima river. In view of the fact that the Defendants are obstructing the Plaintiff in drawing water from the said

pipeline that the suit in question came to be filed. In the suit the Plaintiff filed an application for temporary injunction which was marked as Exh.5. The Defendant No.1 filed his reply to the said application. The Defendant denied that the Plaintiff has half share in the pipeline and is entitled to draw water from the pipeline for irrigating his lands. It is the case of the Defendants that the pipeline has been laid pursuant to the permission which was granted in the name of the Defendant No.1 by the Maharashtra Krishna Kore Development Corporation as also the Irrigation Department, Government of Maharashtra. It is the case of the Defendants that they have installed the water pipeline and they have been paying the electricity bills etc. and the Plaintiff has no right much less to the extent of 50% share in the said pipeline so as to draw water which is fetched from the Bhima river. The Trial Court considered the said application and has by its order dated 10.12.2014 rejected the same.

4. The Trial Court has recorded a finding against the Plaintiff on the basis that the Plaintiff has not produced a single document to show that he has any connection with the pipeline. The Trial Court adverted to the permission granted by the Maharashtra Krishna Kore Development Corporation as also the PWD, wherein the permission was granted in respect of the half land which have been mentioned in the plaint, paragraph 1. The Trial Court therefore observed that the permission which

is granted to the Defendant No.1 was for the entire land of 4 hectares, which includes land Gat No.2512 admeasuring 1.39 hectares. The Trial Court also adverted to the fact that the agreement to lay the pipeline beneath the land of one Krishnarao Shitole was entered into by the Defendant No.1 with the said Krishnarao Shitole. The Trial Court also took into consideration the fact that the electricity bill also stands in the name of Defendant No.1, and that the water taxes are also paid by the Defendant. The said documents according to the Trial Court prove that the pipeline exclusively belongs to the Defendant No.1. The Trial Court discounted the documents relating to the Police complaint and the purchase of pipes from one M/s. Anand Enterprises produced by the Plaintiff. The Trial Court observed that in the absence of the specification of the pipes, motor and couplings, the said bills could not be accepted. The Trial Court therefore held that the Plaintiff has not made out a prima-facie case in respect of the said pipeline as well as the balance of convenience would not be in favour of the Plaintiff as also the Plaintiff would not suffer any irreparable loss. The Trial Court accordingly by its order dated 10.12.2014 has rejected the application Exh.5.

5. The aggrieved Plaintiff carried the matter in Appeal by way of Misc. Civil Appeal No.451 of 2014. The Lower Appellate Court did not deem it appropriate to interfere with the order passed by the Trial Court

and after reiterating and confirming the findings of the Trial Court has dismissed the Appeal by the impugned order dated 22.12.2014.

6. The Learned Senior Counsel appearing on behalf of the Petitioner Mr. P. S. Dani by relying upon the permission granted by the Maharashtra Krishna Kore Development Corporation and PWD would contend that since the said permission makes a reference to all the four lands, the Plaintiff is entitled to draw water from the said pipeline. The Learned Counsel would contend that since the lands were ancestral lands in so far as the drawing of water is concerned, the Plaintiff cannot be restrained from drawing water from the land in question and therefore, the Trial Court has erred in rejecting the application for temporary injunction.

7. Per contra the Learned Counsel Mr. Rohit Gangawane appearing for the Respondents would support the impugned order. The Learned Counsel would contend that all the four lands figure in the permission as the 7/12 extracts of the four lands are in the joint name of the Plaintiff and the Defendants and in view thereof the Plaintiff cannot take advantage of the mentioning of the said four lands in the permission which is granted by the Maharashtra Krishna Kore Development Corporation and the PWD. The Learned Counsel would contend that in the

permission granted by the PWD, the same ex-facie discloses that it is in respect of the half portion that is the portion of the Defendant No.1 and therefore the case of the Plaintiff based on the said permission cannot be accepted.

8. Having heard the Learned Counsel for the parties I have considered the rival contentions. Though in the instant case it is undisputed that the lands were ancestral, the fact that the Plaintiff and the Defendants are in separate possession of their respective shares is not disputed. The fact that there is separation between the parties about 30 to 40 years back is also not disputed. It is required to be noted that the permission was applied to by the Defendant No.1 and was also granted in his name. The said permission has been granted long back as in the year 2000 to which the Plaintiff has not taken any exception till the filing of the instant suit. A perusal of the permission granted by the Irrigation Department would show that it is in respect of the said four lands. The mentioning of the said four lands in the permission is therefore to be attributed to the fact that the 7/12 extract in respect of the lands which have come to the Defendant No.1 as also in respect of the lands of the Plaintiff, stand jointly in the name of the Plaintiff and the Defendant. Hence, much significance cannot be attached to the mentioning of the said four lands in the permission granted as the application for permission had

to be supported by the 7/12 extracts. Both the Courts below having come to a conclusion on the basis of the material on record namely application for permission, the permission granted by the Maharashtra Krishna Kore Development Corporation and the PWD, electricity bills, water taxes receipt etc. show that it is the Defendant No.1 to whom the pipeline exclusively belongs and that the Plaintiff has not been able to establish any right in respect of the said pipeline. In the light of the concurrent orders passed by the Courts below, no case for inference in the Writ Jurisdiction of this Court is made out.

9. In so far as the order dated 05.01.2015 is concerned, by the said order the application Exh.28 for Police aid has been allowed. The said application has been allowed in view of the fact that it is the case of the Defendant that the Plaintiff has opened channels and closed the valves for the water to go to the field of the Defendant. Since the Courts below have come to a conclusion, it is the Defendant No.1 who has an exclusive right over the pipeline, the Police aid for the purpose mentioned in the said order dated 05.01.2015 cannot be found fault with. Hence, in respect of said order dated 05.01.2015, no case for interdiction with the said order is also made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]