

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1284 OF 2015**

Subhash Tukaram Jadhav & Ors.	...Petitioners
vs.	
Prakash Ratnnappa Yadav	...Respondent
Mr. Sangramsinh Yadav for the Petitioners.	

CORAM : R. M. SAVANT, J.

DATE : 11th MARCH, 2015.

PC. :-

The writ jurisdiction of this Court is invoked against the order dated 18th October, 2014 passed by the learned Adhoc District Judge, 4 Kolhapur, by which order, the Misc. Civil Appeal No.227/2012 filed by the Respondent No.1 herein came to be partly allowed and resultantly the application Exhibit 5 also came to be partly allowed to the extent of injunction being granted in respect of 86 Are portion in the suit property. The suit in question being Regular Civil Suit No.189/2012 has been filed by the Respondent No.1-original Plaintiff for an injunction for restraining the Defendants from dispossessing the Plaintiffs from the suit property. The suit property is the land in Block No.540 purchased by the Plaintiffs from one Ramchandra and the heirs of one Gajanan who has expired. In so far as Block No.540 is concerned, it admeasures 1 H and 72 Ares. By sale deed executed

on 12th December, 2008 and area of 86 Ares in the said Block No.540 was sold to the Plaintiffs by Ramchandra and the heirs of Gajanan. Thereafter by another sale deed dated 7th December, 2010 a plot of land out of the said Block No.540 admeasuring 28 Ares was sold to the Plaintiffs, hence, the subject matter of the suit are 86 and 28 Ares of land in the said block No.540 which have been purchased by the Plaintiff. In the said suit, the Plaintiff filed an application for temporary injunction. The Trial Court considered the material on record and reached a conclusion that the Plaintiff cannot be said to be in possession of the suit property purchased by the said two sale deeds. The Trial Court accordingly by its order dated 14th August, 2012 rejected the application for temporary injunction. The Plaintiff carried the matter in Appeal by way of Misc. Civil Appeal No.227/2012. The lower Appellate Court having regard to the fact that the said property was the ancestral property of the Ramchandra, late Gajanan and their sister Kalpana Ulpe and sons, and since their father Tukaram Keshav Jadhav had expired on 18th October, 2006 that is after coming into force of the amendment to section 6 of the Hindu Succession Act held that all the three parties would hold the property in one third shares. The lower Appellate Court further held that the 7/12 extract discloses that the parties had partitioned the said Gat number amongst themselves and since the said property has

been partitioned, the said Ramchandra and late Gajanan had sold the property which has come to their share. The lower Appellate Court therefore held that the said Ramchandra and late Gajanan were entitled to sell 86 Ares of the land out of the said block no.540. In respect of the aspect of possession the lower Appellate Court adverted to the material that was placed on record, namely, the agreement executed by the Plaintiff with one Shankar Rathod to dig the well in the said 86 Are portion. The documents relating to the Maharashtra Electricity Distribution Company to show that the Plaintiff has applied for electric connection in the said 86 Are portion and the installation of the motor pump on the well. The document relating to the Plaintiff having registered himself with the said Sadashivrao Mandlik Co-operative Sugar Factory for supply of sugarcane, which fact has also been admitted by the Defendants. Having regard to the aforesaid facts, the lower Appellate Court came to a conclusion that the Plaintiff is in possession of 86 Ares of land, however, in so far as the sale of 28 Ares of land the lower Appellate Court held that the said Ramchandra and heirs of late Gajanan had no right to sell the said portion and, therefore, though in the sale deed dated 7th December, 2010 it is shown that the Plaintiff has been handed over possession, he cannot be held to be in possession of the said portion i.e. 28 Ares. The lower Appellate Court, therefore,

deemed it appropriate to grant an injunction in respect of 86 Ares of land and restricted it to the said portion in the Gat no.540. The lower Appellate Court has, therefore, upset the order passed by the Trial Court for cogent reasons. In my view, since the lower Appellate Court has recorded a finding of fact as regards the possession of the Plaintiff in respect of 86 Ares of land, the said finding does not warrant any interference at the hands of this Court in its writ jurisdiction. The Writ Petition is accordingly dismissed.

(R. M. SAVANT, J.)