

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7666 OF 2014

Rajesh Baburao Kshirsagar	...	Petitioner
Vs.		
Santosh Baburao Kshirsagar	...	Respondent

Mr. Anand S. Kulkarni for Petitioner.
Mr. Priyal G. Sarda for Respondent.

CORAM : R. G. KETKAR, J.
DATE : 17TH JUNE, 2015

P.C. :

Heard Mr. Kulkarni, learned Counsel for petitioner and Mr. Sarda, learned Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order dated 20.01.2014 passed by the learned District Judge-II, Solapur in Civil Miscellaneous Appeal No.79 of 2013. By that order, the learned District Judge allowed the Appeals and modified the trial Court's operative order. The learned District Judge allowed the application exhibit-22 taken out by defendant No.1 and restrained the plaintiff from causing obstruction and interference in possession of defendants No.1 to 3 over plot No.42, which is situate towards eastern side of 800 sq.ft. of plaintiff.

3. In support of this Petition, Mr. Kulkarni submitted that petitioner-plaintiff instituted Suit for partition of plot No.8 in C.T.S. No.20/1/B/2 as more particularly described in paragraph 1-A as also plot No.42 in C.T.S. No.20/1B/1A/1/1 as more particularly described in paragraph 1-B of the plaint as also for perpetual injunction and declaration. During the pendency of the Suit, plaintiff took out application at exhibit-5 for

injunction restraining defendants from creating third party interest in the suit property. Defendant No.1 took out application at exhibit-22 for injunction restraining plaintiff from obstructing possession over property described in paragraph 1-A of the plaint as also restraining plaintiff from disturbing possession of 800 sq.ft. plot comprising of 10' x 15' ft hall and 2 rooms admeasuring 10' x 10' ft. each. By judgment and order dated 05.04.2013, the learned trial Judge allowed the applications and restrained defendants from creating third party interest. Plaintiff was also restrained from obstructing and disturbing possession of defendants No.1 to 3 over their portion from plot No.42. Aggrieved by that decision, Miscellaneous Civil Appeals were preferred. Petitioner filed Miscellaneous Civil Appeal No.79 of 2013. Petitioner has preferred this Petition challenging the order below exhibit-22. By the impugned order, the learned District Judge has modified the trial Court's order and issued injunction restraining plaintiff from causing obstruction and interference over plot No.42, which is situate towards eastern side of 800 s.q.ft. of plaintiff.

4. Mr. Kulkarni submitted that the suit properties are the joint family properties. These properties are purchased by the father of the parties, namely late Baburao Vitthal Kshirsagar. They are his self acquired properties. Petitioner is carrying on business of hair cutting salon in properties described in paragraph 1-A of the plaint. He submitted that the licence issued under the Bombay Shops and Establishment Act, 1948 clearly shows that the hair cutting salon of the petitioner is situate in the property described in paragraph 1-A of the plaint. He further submitted that even the Court of the learned Judicial Magistrate First Class, Solapur had issued summons in Criminal Case No.1346 of 2009 mentioning address of the hair cutting salon on plot No.8, which is the property described in paragraph 1-A of the plaint. He submitted that

these documents clearly establish that the petitioner is carrying out hair cutting salon in the property described in paragraph 1-A. The learned District Judge however, did not issue injunction restraining the defendants from causing any interference / obstruction for his carrying on business in the shop situate in the property described in paragraph 1-A.

5. On the other hand Mr. Sarda supported the impugned order. He submitted that in paragraph 11 of the written statement and say to the injunction application, defendant No.1 specifically contended that the property described in paragraph 1-B of the plaint was orally partitioned by Baburao Kshirsagar. The property was divided equally among 4 sharers and plaintiff was allotted western side of plot No.42 admeasuring 800 sq.ft. and others were allotted 800 sq.ft. each. Plaintiff carried out construction of two rooms admeasuring 10' x 10' ft. and is carrying on business on the western side of plot No.42. Mr. Sarda further submitted that the property described in paragraph 1-A of the plaint is his self acquired property. Defendant No.1 has purchased that property from Shantabai Gajghate for a consideration of Rs.2,40,000/- and she had executed sale deed on 29.06.2006. He submitted that the learned District Judge prima facie held that the property described in paragraph 1-A of the plaint is the self-acquired property of defendant No.1. However, as plaintiff claimed it is the joint family property, the Courts below issued injunction restraining defendants from creating third party interest. He submitted that in paragraph 18, the learned District Judge recorded that plaintiff was allotted 800 sq.ft. open space from the western side over which he had constructed two rooms. He submitted that the learned District Judge further recorded that the factum of partition and construction of 2 rooms of plaintiff and the rest of the construction carried out by other defendants was not seriously disputed

by the plaintiff.

6. Mr. Kulkarni submitted that the plaintiff is in possession of hair cutting salon situate in the property described in paragraph 1-A of the plaint. Prima facie, it is not possible to accept this submission as the sale deed dated 29.06.2006 stands in the name of the defendant No.1. The Courts below prima facie held that this is a separate property of the defendant No.1. Defendant No.1 admitted that plaintiff is carrying on business on the western side of plot No.42. It is in these circumstances, the learned District Judge modified the injunction issued by the trial Court and restrained the plaintiff from causing obstruction and interference in possession of defendants No.1 to 3 over plot No.42, which is situate over the eastern side of 800 sq.ft. of plaintiff.

7. In view thereof, I do not find that the learned District Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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