

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4471 OF 2014**

Balasaheb Ramchandra Muke & Ors

..Petitioners

Vs.

Dwarka Sopan Salunkhe & ors.

..Respondents

Mr. Kalpesh Patil for the Petitioners

Mr P. B. Gujar for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 9th JANUARY, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 7-3-2014 passed by the Learned Ad-hoc District Judge-2, Satara, by which order, the Appeal filed by the Petitioners came to be dismissed and resultantly the order dated 27-1-2014 passed by the Trial Court allowing the application Exhibit 5 and rejecting the application Exhibit 107, came to be confirmed. Hence there is a concurrent finding recorded against the Petitioners as regards their entitlement to the discretionary relief of temporary injunction sought vide Exhibit 107 and in favour of the Respondent No.1 original Plaintiff as regards his entitlement to temporary injunction which was sought vide Exhibit 5. Both the Courts below on the basis of the material on record have come to a conclusion that it is the Plaintiff who is entitled to the exercise of discretion and the Defendant Nos.1 and 2 are not.

2 The Suit in question being Regular Civil Suit No.169 of 2011 has

been filed for declaration of ownership and injunction in respect of the suit properties being Gat No.946 area admeasuring 36 Ares, Gat No.947 area admeasuring 29 Ares and Gat No.969 area admeasuring 70 Ares situated at Village Mardhe, Taluka and District Satara along with Well situated in Gat No.969 electric motor pump, pipe line etc. The Suit is founded on a partition which has taken place vide Partition Deed dated 29-12-1985. The Petitioners herein i.e. the Defendant Nos.8 to 12 are claiming through one Gunabai who is the sister of Anandrao. It is required to be noted that Anandrao, Vishnu, Vyankat and Gunabai are the series of one Govind Yesu Godase who can be said to be the common ancestor. In the said Suit, the Plaintiff filed an application along with the Defendant Nos.1 and 2 for injunction against the Defendant Nos.8 to 12 from disturbing their possession in respect of the suit properties. The Defendant Nos.8 to 12 have filed their counter claim and the theory propounded by the said Defendants that there is no partition and hence by filing the counter claim the Defendants have sought the relief of partition. The Defendants by virtue of the said counter claim filed their own application for injunction being Exhibit 107, claiming injunction against the Plaintiff from disturbing their possession which they claim exclusively for themselves.

3 The Trial Court considered the said applications Exhibit 5 and Exhibit 107 and having regard to the Partition Deed dated 29-12-1985 and the partition yadi (list) comprised therein and also having regard to the factum

that Vyankat who had filed the Suit against Anandrao being Regular Civil Suit No.775 of 2001 wherein he has made a reference to the said partition yadi (list) came to a conclusion that prima facie the case of the Plaintiff that a partition has taken place was borne out. The Trial Court observed that in terms of partition yadi (list) the parties are in possession and enjoyment of their separate shares. The Trial Court also adverted to the fact that the said partition yadi (list) has not been objected to either by Vishnu or Vyankat or Gunabai since the year 1985 and it is for the first time after the instant Suit has been filed that the said partition yadi (list) is sought to be questioned. In so far as 7/12 extracts on which reliance was sought to be placed on behalf of the Defendant Nos.8 to 12 wherein the name of Anandrao is appearing, the Trial Court held that the presumption which arises on account of 7/12 extract can be said to be rebutted on account of the partition yadi (list) and therefore the said 7/12 extract would not further the case of the Defendants in opposing the application for injunction and claiming injunction unto themselves. The Trial Court has accordingly by order dated 27-1-2014 allowed the application Exhibit 5 and rejected the application Exhibit 107.

4 The Defendant Nos.8 to 12 aggrieved by the said order passed by the Trial Court carried the matter in Appeal by filing Misc Civil Appeal No.9 of 2014. The Lower Appellate Court on a re-appreciation of the material on record did not deem it appropriate to interfere with the exercise of the

discretion by the Trial Court and by reiterating the findings of the Trial Court as regards the partition yadi (list) and 7/12 extract etc., has dismissed the Appeal. The order passed by the Lower Appellate Court is dated 7-3-2014 and the order passed by the Trial Court is dated 27-1-2014, the Learned Counsel for the Respondent No.1 states that the Plaintiff is in possession of the suit property.

5 Having heard the Learned Counsel for the parties and having considered the order passed by the Trial Court and the Lower Appellate Court, in my view, there is no error of jurisdiction or any other illegality or infirmity in the orders passed by the courts below in the matter of granting and refusing injunction to the Plaintiff and the Defendant Nos.8 to 12 for this Court to interdict in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]