

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

**WRIT PETITION NO.5741 OF 2015**

**Shri. Suryodhan Sukhadeo Pawar**

**.. Petitioner**

**Versus**

**Shri. Bhima Sitaram Pawar**

**.. Respondent**

**Shri. Prashant G. Sawant, for the Petitioner.**

**Shri. S. K. Shinde, Senior Advocate a/w Shri. Sudam Kale, for the Respondent.**

**CORAM : R.M. SAVANT, J.**

**DATE : 2<sup>nd</sup> SEPTEMBER, 2015**

**PC.**

1. The Writ Jurisdiction of this Court is invoked against the order dated 06.06.2015 passed by the Learned District Judge-1, Nashik, by which order the Appeal filed by the Respondent herein came to be allowed and resultantly, the order dated 23.02.2015 passed by the Trial Court allowing the application for temporary injunction Exh.5 came to be set aside and the Application Exh.5 in turn came to be dismissed.

2. The Petitioner herein is the original Plaintiff who has filed the suit for simplicitor injunction. The controversy in the instant Petition is restricted to Gat No.14 admeasuring 38 Ares though the suit has been filed in respect of the two properties i.e. Gat No.14 and Gat No.15 of

Mauje Pandhurli, Taluka Sinnar, District Nashik. The cause for filing the suit was the commencement of the construction by the Petitioner herein pursuant to the permission granted by the Gram Panchayat Pandhurli. The said permission contemplates that the construction should be carried out with the consent of the other co-sharers. It is an undisputed fact that the Petitioner herein and the Respondent are the co-sharers in respect of the property being Gat No.14 and Gat No.15 along with the other co-sharers who are not parties to the suit. In the said suit, the Plaintiff filed an application for temporary injunction i.e. Exh.5. The Trial Court principally on the ground that the Plaintiff and the Defendant are co-sharers and one co-sharer could not construct upon the joint property has enjoined the Defendant by allowing the Application Exh.5 by its order dated 23.02.2015. The Trial Court has relied upon the judgments of this Court as well as other High Courts which have been reflected in the order passed by it.

3. The Defendant against the said order dated 23.02.2015 carried the matter in Appeal by filing Misc. Civil Appeal No.38 of 2015. The Lower Appellate Court as indicated above has upset the order passed by the Trial Court by the impugned order and set aside the injunction granted by the Trial Court. What has weighed with the Lower Appellate Court is the fact that the Plaintiff has also fenced his property as also the

fact that other co-sharers Vithal, Martand, Ananda Pawar have also constructed cement concrete houses on Gat No.14 on the area which is in their possession. It seems that the revenue record discloses the extent of the shares of the each parties which is mentioned in terms of Anewari (In terms of paise). The Lower Appellate Court has also taken into consideration the fact that the share of the common ancestor one Butaji Pawar to the extent of 5 anna 4 pie has also been separated which according to the Lower Appellate Court is indicative of the fact that the parties were enjoyment of separate shares though the property has not been partitioned by metes and bounds. It is having regard to the aforesaid circumstances that the Lower Appellate Court deemed it appropriate to upset the order passed by the Trial Court and dismissed the Application Exh.5. In my view, having regard to the aforesaid reasons, the Lower Appellate Court cannot be said to be exceeded its jurisdiction as the facts which have been stated herein above having not been taken into consideration by the Trial Court and the Trial Court merely on the basis that the Plaintiff and the Defendant are co-sharers and one co-sharer cannot build upon the land in question has injuncted the Defendant. The aforesaid facts as mentioned are indicative of the fact that the parties were in enjoyment of the separate shares. In my view, the Plaintiff's interest can be protected if the Defendant i.e. the Respondent is directed to file an

undertaking to the effect that if Plaintiff succeeds in the suit the Defendant would remove the construction if the occasion so arises. The Learned Counsel for the Respondent states that such an undertaking would be filed within two weeks from date in the Trial Court. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]