

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

WRIT PETITION NO.8158 OF 2013

Bhaskar Raghunath Potinde and ors. : Petitioners
versus
Govind Ambadasji Rai and anr. : Respondents.

Mr. Anilkumar Patil for the Petitioners.
None for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 05th January 2015

P.C.

1 The writ jurisdiction of this court is invoked against the order dated 4th May 2013 passed by the learned District Judge-4, Nashik by which order the Appeal filed by the Plaintiff being Civil Misc. Appeal No.166 of 2012 came to be allowed and resultantly the order dated 31/10/2012 passed by the Trial Court rejecting the Application (Exhibit 5) came to be set aside and in turn injunction came to be granted to the Plaintiff.

2 The suit in question i.e. Regular Civil Suit No.938 of 2012 has been filed by the Plaintiff for perpetual injunction for restraining the Defendants from interfering with his possession of the suit property. In the said suit the Plaintiff filed an Application for temporary injunction. It was the case of the Plaintiff that the Defendants are disturbing his possession by encroaching upon the suit property. The Plaintiff lays a claim to the suit

property on the basis of a Sale Deed which has been executed in his favour by the grand-father of the Defendant No.3 on 15/2/1968 pursuant to which Mutation Entry came to be effected in favour of the Plaintiff in the year 1975.

3 The Trial Court rejected the said Application for temporary injunction on the ground that though the Plaintiff is in possession, the Plaintiff has not made out any case of any encroachment being carried out by the Defendants and therefore the Plaintiff was not entitled to the relief by way of temporary injunction. The Trial Court accordingly by its order dated 31/10/2012 rejected the Application for temporary injunction.

4 The Plaintiff aggrieved by the said order passed by the Trial Court rejecting the Application for temporary injunction filed Civil Misc. Appeal No.166 of 2012. The Lower Appellate Court adverted to the fact that the Plaintiff was in long standing possession by virtue of the Sale Deed executed in his favour in the year 1968 and the Trial Court had therefore erred in rejecting the Application for temporary injunction on the ground that there was no apprehension of encroachment on the part of the Defendants. The Lower Appellate Court held that the Mutation Entries are in the name of the Plaintiff right from the year 1975 till the date of filing of the suit and therefore the factum of the Plaintiff being in possession was not rebutted by the Defendant by any cogent material. The Lower Appellate Court therefore deemed it

appropriate to interfere with the order passed by the Trial Court as according to the Lower Appellate Court, the Trial Court has erroneously rejected the Application for temporary injunction on the ground of there being no apprehension of encroachment on the part of the Defendants, after coming to a conclusion that the Plaintiff is in possession. In my view, the Lower Appellate Court has set aside the order passed by the Trial Court for cogent reasons.

5 In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. However, in the facts and circumstances of the present case, the hearing of the Regular Civil Suit No.938 of 2012 is expedited.

[R.M.SAVANT, J]