

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

WRIT PETITION (ST) NO.23463 OF 2014

Tatoba Ramu Khot

...Petitioner

vs.

Suresh Bira Ghubade & Ors.

...Respondents

Mr. Manoj A. Patil for the Petitioner.

Mr. P. M. Arjunwadkar for the Respondent No.1.

CORAM : R. M. SAVANT, J.

DATE : 5th MARCH, 2015.

PC. :-

The writ jurisdiction of this Court is invoked against the order dated 5th July, 2014 passed by the learned District Judge-1, Jaysingpur, by which order the Appeal filed by the Petitioner herein in Misc. Civil Appeal No.50/2012 came to be dismissed and resultantly the order dated 20th October, 2012 passed on the application Exhibit 5 in Regular Civil Suit No.18/2012 rejecting the said application came to be confirmed. The Petitioner herein is the original Plaintiff who has filed the suit in question for an injunction against the Defendant Nos.1 to 5 as it is his case that the Defendants are trying to take forcible possession of the suit property and that on 1st December, 2011 they tried to erect a compound in the suit property. The Plaintiff claims to be in exclusive possession of the suit property on the basis of being the heir of one Sonabai Ramu Khot. The Plaintiff claims to be the son of the said Sonabai. It seems that the Plaintiff has got mutated his name in the

revenue record in respect of the suit property being plot No.53 in Gat No.32 at village Latwadi, Tal.Shirol, District Kolhapur. The Plaintiff has filed the suit on the basis that he is the owner and in actual possession of the suit property. The Defendant Nos.1 to 5 filed their reply to the said application for temporary injunction. It is the case of the Defendants that after the death of Sonabai Khot, the Plaintiff i.e. Tatoba and the two daughters of Sonabai, namely, Putlabai and Shantabai are the legal heirs of Sonabai. Since Shantabai is no more her children i.e. Kashinath and Kasturi are her legal heirs. It is further contended on behalf of the Defendants that on 24th January, 2011 the legal heirs of Sonabai executed an agreement to sale in favour of Gaurabai Suresh Ghubade and it is the case of the Defendants that the said Gaurabai was put in possession of the suit property. The Trial Court considered the said application Exhibit 5 and by its order dated 20th October, 2012 rejected the said application. The Trial Court rejected the said application principally on the ground that there was a suppression of fact by the Plaintiff in respect of the execution of the agreement to sale dated 24th January, 2011 in favour of Gaurabai. The Trial Court observed that the Plaintiff who is seeking an equitable relief was not entitled to the said relief on account of suppression of the said fact. This the Trial Court did after recording a finding that, prima facie, it appears that the Plaintiff is in possession of the suit property.

2] The order passed by the Trial Court on 20th October, 2012 rejecting the application for temporary injunction was carried in Appeal by the Plaintiff by filing Misc. Appeal No.50/2012. The lower Appellate Court reiterated the finding of the Trial Court as regards the suppression of the relevant fact of the execution of the agreement to sell dated 24th January, 2011. The lower Appellate Court has observed that the Plaintiff also misrepresented the governmental authorities that he is the sole heir of the said Sonabai Khot. The lower Appellate Court also observed that since the Plaintiff was an executant of the agreement to sale dated 24th January, 2011 which he has executed along with the other heirs of Sonabia, the suppression of the said fact of the agreement impinges upon the entitlement of the Plaintiff to the discretionary relief of temporary injunction, the lower Appellate Court accordingly dismissed the Appeal.

3] In the light of the concurrent orders passed by the Courts below and especially having regard to the fact that the Plaintiff has suppressed the relevant fact of the Agreement to Sale, the orders passed by the Courts below refusing to grant injunction to the Plaintiff do not merit any interference at the hands of this Court in its writ jurisdiction. The Writ Petition is accordingly dismissed.

(R. M. SAVANT, J.)