

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St.NO.23958 OF 2015**

Rajendra Shankar Kalke & Anr.

..Petitioners

Vs.

Rohidas Bajrang Kalke & Ors.

..Respondents

Mr. Amrut Joshi i/b Mr. Rushabh Sheth for the Petitioners

Mr. Pratap Patil for the Respondent Nos.1 and 2

CORAM : R. M. SAVANT, J.

DATE : 13th OCTOBER, 2015

P.C.

1 The Order dated 10-7-2015 passed by the Learned Ad-hoc District Judge 2, Sangli, allowing the Misc Civil Appeal No.153 of 2014 filed by the Respondent Nos.1 and 2 herein, came to be allowed and resultantly the order dated 31-7-2014 allowing the application for temporary injunction passed by the Trial Court came to be set aside, is taken exception to by way of the above Petition.

2 The Petitioners are the original Defendant Nos.4 and 5 to the Suit in question being Regular Civil Suit No.102 of 2014 which has been filed for injunction simplicitor for restraining the Defendant Nos.4 and 5 from disturbing the Plaintiffs possession. The possession of the Plaintiff and the Defendants is on the basis of the consolidation scheme which was finalised in the year 1987 and wherein the Plaintiffs and the Defendants who are closely related as they are claiming through a common ancestor had filed the consent

statement for retaining the properties which were in their possession and the Gats to be formed in respect of the said properties which were in possession of the Plaintiffs and the Defendants. On the ground that the Defendants are interfering with their possession that the Plaintiffs filed the Suit in question seeking injunction against the Defendants. In the said Suit, the Plaintiffs filed an application for temporary injunction. In the context of the challenge raised in the present Suit, it is required to be noted that the Defendant Nos.4 and 5 in their reply to the application in paragraph 9 have averred that the occupants of Gat No.226 have encroached upon the lands of the Defendants in Gat No.228 to the extent of 33 Ares. Hence the Defendant Nos.4 and 5 accepted that the Plaintiffs are in possession of the Gat No.226 and that they are in possession of Gat No.228. As indicated above the said possession is referable to the consolidation scheme which was finalised in the year 1987.

3 The Trial Court considered the said application Exhibit 5 and by its order dated 31-7-2014 has rejected the said application. The Trial Court seems to have been swayed by the allegations of the Defendants that the Plaintiffs have encroached upon 33 Ares of land in Gat No.228 which belong to the Defendants. The Trial Court has also held that the Plaintiffs have not shown as to on what basis they are in possession of Gat No.226, by observing that the Plaintiffs have not produced any document in that respect before the Trial Court. The Trial Court therefore observed that the Plaintiffs have not made out

a prima facie case. The balance of convenience was also not in favour of the Plaintiffs and that no irreparable loss would be caused to the Plaintiffs if injunction is not granted and accordingly rejected the application Exhibit 5 filed for temporary injunction.

4 The aggrieved Plaintiffs carried the matter in Appeal by filing Misc Civil Appeal No.153 of 2014. The Lower Appellate Court on a re-appreciation of the material on record has come to a conclusion that the Trial Court has erred in rejecting the application for temporary injunction. The Lower Appellate Court has whilst allowing the Appeal adverted to the implementation of the consolidation scheme, in so far as the Plaintiffs and the Defendants are concerned on the basis of the consent statement filed on their behalf. The Lower Appellate Court was of the view that though it is the case of the Defendants that the Plaintiffs have encroached upon 33 Ares of land in Gat No.228 in terms of the said consent statement, the same cannot be termed as having been encroached and that the Plaintiffs would be entitled to retain the same as they are entitled to be in possession of the land which is reflected in the 7/12 extract. The Lower Appellate Court was of the view that the Trial Court has not properly appreciated the said consent statement executed by the Plaintiffs and the Defendants on the implementation of the consolidation scheme in the village in question. As indicated above the Lower Appellate Court has set aside the order passed by the Trial Court and granted a limited

injunction restraining the Defendant Nos.4 and 5 i.e. the Petitioners herein from disturbing the possession of the Plaintiffs.

5 The Learned Counsel appearing for the Petitioners Mr. Joshi would contend that the Lower Appellate Court without holding that the finding of the Trial Court is perverse has upset the order passed by the Trial Court and granted injunction to the Plaintiffs.

6 In my view, it is not possible to accept the said contention as the Lower Appellate Court in the impugned order has stated the reasons as to how the Trial Court has gone wrong in granting the discretionary relief of temporary injunction which reasons revolve around the consent statement executed between the Plaintiffs and the Defendants. In my view therefore, the Lower Appellate Court has for cogent reasons set aside the order passed by the Trial Court and granted the limited injunction against the Defendant Nos.4 and 5. Hence no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

7 Needless to state that the Suit in question would be tried on its own merits and in accordance with law, uninfluenced by the impugned order or the instant order.

[R.M.SAVANT, J]