

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

WRIT PETITION NO.10651 OF 2014

Shri. Laxman Ramchandra Aadekar

.. Petitioner

Versus

Smt. Suvarna Bacharam Sawant and another

.. Respondents

Mr. Manoj A. Patil, for the Petitioner.

Mr. Sandeep S. Koregave, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 24th FEBRUARY, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 02.08.2014 passed by the Learned Adhoc District Judge-2, Kolhapur, by which order the Misc. Civil Appeal No.47 of 2014 came to be allowed and resultantly the order dated 31.01.2014 passed by the Learned Civil Judge, Junior Division, Kagal came to be set aside and the application Exh.5 in turn came to be allowed.

2. The Plaintiffs have filed the suit in question for permanent injunction against the Defendants in respect of the land bearing Gat No.212, area admeasuring 4 Hecter 68 Ares. The Plaintiffs claim through one Bacharam and Ganpati Sawant who were real brothers. The cause for filing of the suit was the agreement to sale dated 03.11.1997 executed by

the predecessor of the Plaintiffs in favour of the Defendant in respect of 80 Ares of land in Gat No.212 on the ground that the Defendant is seeking to disturb their possession in respect of the property which belong to the Plaintiffs on the basis of the said agreement to sale that the suit in question came to be filed by the Plaintiffs. In the said suit, the Plaintiffs filed an application for temporary injunction. The Defendant filed his written statement-cum-reply. The Defendant averred that out of the land bearing Gat No.212 area admeasuring 80 Ares having boundaries which were mentioned in the reply were agreed to be sold by Ganpati Bhairu Sawant for Rs.95,000/- for his legal necessity. The said Ganpati Bhairu Sawant has accordingly executed the agreement to sale dated 03.11.1997 by accepting Rs.50,000/- towards the earnest amount. It is the case of the Defendant that on the date of agreement to sale was executed, the possession of 80 Ares of land was handed over to the Defendant. It is the case of the Defendant that from the date of the agreement he along with the help of the villagers was cultivating the said land and growing crops like Sugarcane, Paddy, Peanuts and Jowar etc. The Defendant averred that the deceased Ganpati Sawant was his brother-in-law and it is out of love and affection that the deceased Ganpati Sawant executed agreement to sale of the said 80 Ares land. It was further averred by the Defendant that the yield of Sugarcane was supplied by him to Shri. Chhatrapati Shahu

Sahakari Sakhar Karkhana Ltd., Kagal and Defendant has also taken crop loan from Shri. Hanuman Vividh Karyakari Sahakari Seva Sanstha Maryadit, Nandyal, Taluka-Kagal, District-Kolhapur. It is the case of the Defendant that the suit property i.e. Gat No.212 is known as "Mal". The Trial Court considered the said application Exh.5 and by its order dated 31.01.2014 has allowed the same. The Trial Court held that it is the Plaintiff who is in possession of 80 Ares land out of the suit property on the basis of agreement to sale dated 03.11.1997. The Trial Court also relied upon the photographs which were produced by the Plaintiff showing that he is in possession. The Trial Court also relied upon the entry made in favour of the Defendant for a particular year in the crop cultivation column by the Gaon Kamgar Talathi. The Trial Court also seems to have relied upon the tonnage receipt of the Sugarcane supplied to Shri. Chhatrapati Shahu Sahakari Sakhar Karkhana Ltd., Kagal and therefore reached a conclusion that in so far as the 80 Ares of land is concerned, the Plaintiffs have not proved they are in possession and that it is the Defendants who are in possession and accordingly rejected the application Exh.5.

3. The aggrieved Plaintiffs carried the matter in Appeal i.e. Misc. Civil Appeal No.47 of 2014. The Lower Appellate Court as can be seen from the impugned order went threadbare into the material which has

come on record on a re-appreciation of the material on record the Lower Appellate Court reached a conclusion that the Defendant cannot be said to be in possession of the 80 Ares land and it is the Plaintiffs who are in possession of the entire 4 Hectors and 68 Ares. The Lower Appellate Court held that the Trial Court has wrongly on the basis of the agreement to sale came to a conclusion that it is the Defendant in possession. The Lower Appellate Court held that since the year 1997 to the year 2006 when the said Ganpati Sawant expired not a single notice was addressed by the Defendant to the Ganpati Sawant calling upon him to specifically perform the agreement to sale. The Trial Court further observed that though the tonnage receipts have been produced by the Defendant they are relating to some different Gat number and not Gat No.212 which is the suit property. The Lower Appellate Court further observed that the entry made in a particular year 1998 and 2000 by the Gaon Kamgar Talathi was without notice to the Plaintiffs and therefore, the said entry could not be given weightage. The Lower Appellate Court observed that the revenue record from the year 1997 to the year of the filing of the suit stands in the name of the Plaintiffs and therefore, though a agreement for sale was executed in favour of the Defendant, no cognizance of the same is taken in the revenue record. The Lower Appellate Court also referred to the affidavits filed by the villagers which support the case of the Plaintiffs that they are

in fact cultivating the suit property. The Lower Appellate Court also observed that no credit society would lend money to a party unless he is owner of the land. Hence, the Lower Appellate Court for cogent reasons has set aside the order passed by the Trial Court rejecting the application for temporary injunction filed by the Plaintiffs.

4. The Learned Counsel appearing on behalf of the Petitioner i.e. original Defendant would seek to reiterate the case of the original Defendant in the Courts below. In my view, in the light of the findings of facts which have been recorded by the Lower Appellate Court based on a re-appreciation of the material on record, it cannot be said that the view taken by the Lower Appellate Court on a re-appreciation of the material on record is not a view which could not be taken in the facts and circumstances of the case. The Trial Court in my view had erred in rejecting the application for temporary injunction. Hence, the exercise of the Writ Jurisdiction is not warranted. The Writ Petition is accordingly dismissed. Needless to state that the observations made in the instant order are only for considering the application for temporary injunction. The suit would undoubtedly be decided on its own merits and in accordance with law.

[R.M. SAVANT, J]