

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

WRIT PETITION NO.10757 OF 2014

Vithoba Alias Vitthal Vishnu Bhujbal : Petitioner
versus
Murlidhar Bhau Bhujbal and ors. : Respondents.

Mr. N R Bubna for the Petitioner.
Mr. P S Dani, Senior Advocate, with Mr. Vilas B Tapkir for the Respondent
Nos.1 to 4.

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

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 29/04/2014 passed by the learned District Judge-9 Pune by which order the Appeal filed by the original Plaintiff Nos.2 and 3 came to be allowed and resultantly, the order dated 06/04/2013 passed by the Trial Court i.e. the learned Civil Judge, Junior Division, Ghodnadi (Shirur) rejecting the Application (Exhibit 7) came to be set aside and in turn the Application (Exhibit 7) came to be allowed and the Defendant was restrained from alienating or creating 3rd party interest in the suit property 1E (Gat No.1925) and 1F (Gat No.1921) till the disposal of the suit.

2 The suit in question being Regular Civil Suit No.36 of 2013 has been filed by the Plaintiffs for partition of the suit properties and injunction, which properties are more specifically described in the plaint. The Plaintiffs

claimed that the suit properties are the ancestral properties of Plaintiff No.1 and the Defendant. It is the case of the Plaintiffs that they along with their father and the Defendant have 2/3rd share in the said suit properties whereas the Defendant has 1/3rd share. The Plaintiff Nos.2 and 3 have a registered Agreement to Sale in their favour executed by the Defendant on 25/08/1994 in respect of his undivided share for a consideration of Rs.1,20,000/- . It seems that the Defendant has on 30/11/1995 executed a possession receipt in favour of the Plaintiff Nos.2 and 3. It is the case of the Plaintiffs that the Plaintiff Nos.2 and 3 are in peaceful possession of the suit properties and are cultivating the same. In view of the refusal of the Defendant to execute the sale deed in terms of the Agreement to Sale, the Plaintiff Nos.2 and 3 had filed a suit for specific performance bearing Regular Civil Suit No.104/2000. The said suit came to be decreed by the Trial Court by the judgment and order dated 09/08/2006. The Appeal filed by the Defendant being Regular Civil Appeal No.30/2007 against the said decree came to be dismissed against which a Second Appeal has been filed by the Defendant in this Court which is pending. On the apprehension that the Defendant would create third party rights in respect of the properties in respect of which the Plaintiff Nos.2 and 3 have a decree of specific performance in their favour, the Plaintiff Nos.2 and 3 in the instant suit filed the Application (Exhibit 7) for injunction restraining the Defendant from creating any third party rights in respect of the suit properties 1E and 1F which are the subject matter of the decree for specific performance.

3 The said Application was resisted by the Defendant by raising the contentions which are contained in the reply.

4 The Trial Court by the order dated 06/04/2013 rejected the said Application (Exhibit 7) on the ground that since the Plaintiff Nos.2 and 3 have a decree for specific performance in their favour even if the Defendant creates third party interest, no harm would be caused to the Plaintiff Nos.2 and 3 as in the event of any transaction entered into by the Defendant, the said transaction would have no sanctity and would not bind the Plaintiffs. It is solely on the said ground that the Application (Exhibit 7) filed by the Plaintiff Nos. 2 and 3 came to be rejected by the Trial Court.

5 The Plaintiff Nos.2 and 3 aggrieved by the said order dated 06/04/2013 carried the matter in Appeal by filing Misc. Civil Appeal No.209 of 2013. The Lower Appellate Court having regard to the fact that there is a decree for specific performance in favour of the Plaintiff Nos.2 and 3 in respect of the suit properties 1E and 1F was of the view that the Plaintiff Nos.2 and 3 would be entitled to the relief of injunction as in the event the said relief is not granted, the Defendant would then deal with his share to the prejudice of the Plaintiff Nos.2 and 3. The Lower Appellate Court therefore held that since the properties are as yet undivided and since the suit for partition has been filed by

the Plaintiffs, the Plaintiff Nos.2 and 3 have established prima facie case and balance of convenience is also in favour of the Plaintiffs and therefore the Plaintiff Nos.2 and 3 would suffer irreparable loss if the injunction is refused. The Lower Appellate Court has accordingly allowed the said Appeal and set aside the order passed by the Trial Court rejecting the Application (Exhibit 7).

6 Having regard to the impugned order, the Lower Appellate Court can be said to have set aside the order passed by the Trial Court for cogent reasons and deemed it fit to exercise discretion in favour of the Plaintiff Nos.2 and 3. In my view, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. However, it is clarified that it would be open for the Petitioner/Defendant to apply for variation or modification of the injunction granted in the event he succeeds in the Second Appeal which is pending in this Court.

[R.M.SAVANT, J]