

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

WRIT PETITION NO.11174 OF 2013

Balwant Shrimant Beldar and anr. : Petitioners
versus
Ramesh Mahadeo Patil and ors. : Respondents.

Mr. Avinash B Avhad for the Petitioners.
Mr. Ajay A Joshi for the Respondent Nos. 1 to 4.

CORAM : R. M. SAVANT, J.
DATE : 26th August 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 22/08/2013 passed by the learned District Judge-1 Pandharpur by which order the Appeal being Civil Misc. Appeal No.2/2013 filed by the Petitioners herein came to be dismissed and resultantly the order dated 12/12/2012 passed by the Trial Court i.e. the learned Civil Judge, Junior Division Pandharpur rejecting the application (Exhibit 5) filed by the Petitioners herein i.e. the original Plaintiffs for temporary injunction came to be confirmed. Hence there is concurrent finding recorded by the Courts below as regards Plaintiffs' entitlement to the discretionary relief of temporary injunction.

2 Both the Courts below on the basis of the material on record have come to a conclusion that the discretion could not be exercised in favour of the Plaintiffs. The suit in question i.e. Regular Civil Suit No.135 of 2012 has been

filed by the Petitioners – original Plaintiffs for an injunction restraining the Defendants from interfering with their possession in respect of the suit property. The suit property as mentioned in para 1 of the plaint is the land bearing Gat No.8/1 admeasuring 1 Hectore and 94 Ares of village Karole, Tal. Pandharpur, Dist. Solapur. It is the case of the Plaintiffs that the said land has been sold by the father of the Plaintiffs to the father of the Defendants, and that the Plaintiffs had filed Regular Civil Suit No.334 of 1992 questioning the said sale deed executed by their father in favour of the father of the Defendants on the ground that as the land was an ancestral property, their father did not have right to sell the same without the consent of the Plaintiffs. On the ground that Defendants are interfering with their possession that the Plaintiffs filed the suit in question for temporary injunction being Regular Civil Suit No.135 of 2012 .

3 In the said suit i.e. Regular Civil Suit No.135 of 2012, the Plaintiffs have filed the application for temporary injunction. The said application was replied to on behalf of the Defendants. It was the contention of the Defendants that the Plaintiffs have no right over the said Gat No.8/1 as the subject matter of the earlier suit i.e. Regular Civil Suit No.334 of 1992 was Gat No.8/2 and not Gat No.8/1.

4 The Trial Court considered the said application (Exhibit-5) and

rejected the same by its order dated 12/12/2012. The Trial Court adverted to the fact that the subject matter of the earlier suit being Regular Civil Suit No.334 of 1992 was Block No.8/2 and not Block No.8/1 which is the subject matter of the present suit. The Trial Court further observed that the Plaintiffs have not placed on record any document or have not clarified as to how they are entitled to the possession of the Block No.8/1 instead of Block No.8/2. The Trial Court has further observed that both Block No.8/1 and Block No.8/2 were in existence when the decree was passed in the earlier Regular Civil Suit No.334 of 1992. The Trial Court has also referred to the notice dated 27/9/2012 issued by the Tahsildar for carrying out exercise of partitioning the property pursuant to the said decreed passed in the said Regular Civil Suit No.334 of 1992. The Trial Court has observed that the earlier notice dated 17/8/2012 was withdrawn by the Tahsildar in view of the fact that there was a mistake in mentioning the suit property which was mentioned as 8/1 in stead of 8/2. The Trial Court has also adverted to the notice dated 27/8/2012 issued by the Tahsildar, Pandharpur for handing over the possession of Block No.8/1 against which the Defendants had filed RTS proceedings being Appeal No.127 of 2012 in which Appeal the Collector, Solapur has granted order of status quo. It is in the back drop of the aforesaid material, that the Trial Court held that the Plaintiffs could not lay a claim of being put in possession of Gat No.8/1 and therefore rejected the application (Exhibit 5) for temporary injunction filed by the Plaintiffs.

5 The Plaintiffs aggrieved by the order dated 12/12/2012 passed by the Trial Court rejecting their application (Exhibit 5) for temporary injunction carried the matter in Appeal by way of Civil Misc. Appeal No.2 of 2013. The Lower Appellate Court reiterated the reasons mentioned by the Trial Court in its order dated 12/12/2012 and on the said basis did not deem it appropriate to interfere with the said order passed by the Trial Court rejecting the application (Exhibit 5) for temporary injunction. The Lower Appellate Court has also observed that the case of the Plaintiffs of being put in possession would have to be adjudicated on merits after the evidence is led by both the parties. The Lower Appellate Court however expedited the hearing of the suit.

6 As indicated above both the Courts below have concurrently held that the Plaintiffs have not made out any case for grant of discretionary relief of temporary injunction. Having regard to the said concurrent orders, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]