

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

**WRIT PETITION STAMP NO.29218 OF 2015**

**Smt. Savitri Dattatraya Thakar and anr. : Petitioners.**

**Versus**

**Smt. Shakuntala Dhondu Thakar and ors. : Respondents.**

**Mr. S A Vaidya for the Petitioners.**

**Mr. V P Sawant a/w Mr. P M Jadhav for the Respondent Nos.1 to 6.**

**CORAM : R. M. SAVANT, J.**

**DATE : 29<sup>th</sup> October 2015**

**P.C.**

1           The writ jurisdiction of this court is invoked against the order dated 14/10/2015 passed by the learned Ad-hoc District Judge-3, Pune by which order the Appeal filed by the Respondent Nos.1 to 6 herein came to be allowed and resultantly, the order dated 02/05/2015 passed by the Trial Court i.e. the learned Civil Judge, Junior Division, Vadgaon Maval allowing the application (Exhibit 18) filed for temporary injunction by the Plaintiffs came to be set aside and the said application came to be rejected.

2           The Petitioners herein are the original Plaintiffs whereas the Respondents herein are the original Defendants. The suit property is the land bearing No.194/2 and the block of two rooms situated at Mouje Tungarli, Lonavala, Tal. Maval, Dist. Pune. It is the case of the Plaintiffs that the said

property was jointly purchased by Dhondu, Laxman and Dattatraya from their income of gardening for the consideration of Rs.2,50,000/-, however, the document in that respect was executed only in the name of Dhondu Thakar who is the brother in law of the Plaintiff No.1 and the paternal uncle of the Plaintiff No.2. The suit in question being Regular Civil Suit No.299 of 2013 was therefore filed by the Plaintiffs for partition of the suit property claiming  $1/3^{\text{rd}}$  share therein except the said relief no other relief is claimed in the suit. After filing of the suit the Plaintiffs filed the application (Exhibit 18) for temporary injunction for restraining the Defendants from carrying out construction on the said plot of land. The construction was addition of some rooms and the construction of a staircase in the property. Pertinently the Plaintiffs did not seek amendment of the plaint so as to incorporate the facts relating to the construction being put up by the Defendants but directly filed the said application (Exhibit 18) for temporary injunction restraining the Defendants from carrying out the construction.

3           The Defendants filed their written statement and reply to the application (Exhibit 18). The Defendants questioned the entitlement of the Plaintiffs to file the said application (Exhibit 18) in the absence of any relief of injunction claimed in main suit. The Defendants also questioned the case of the Plaintiffs that the property is an ancestral property. It was the case of the Defendants that the said property was purchased by Dhondu Thakar through

whom they claim, it was their case that the Plaintiffs have nothing to do with the suit property. Before the Trial Court on behalf of the Plaintiffs the only documents, which were relied upon, were the photographs and the complaint made to Lonavala Police Station. The Trial Court considered the said application (Exhibit 18) and by referring to the case of the Plaintiffs in the suit that the property is an ancestral property and that they are entitled to 1/3<sup>rd</sup> share therein as also taking into consideration the photograph and the complaint lodged with the Lonavala Police Station, held that the Plaintiffs have made out a prima facie case and accordingly allowed the application for temporary injunction. The Trial Court pertinently did not refer to the documents which were produced on behalf of the Defendants viz. the lease deed etc. which was standing in the name of Dhondu, as also the tax/assessment receipts issued by the Lonavala Municipal Council.

4           The aggrieved Defendants, as indicated above, carried the matter in Appeal by filing Misc. Civil Appeal No.219 of 2015. The Lower Appellate Court on a re-appreciation of the material on record came to a conclusion that the Trial Court has erred in granting injunction by merely by relying upon the photographs and the complaint lodged with the Lonavala Police Station in the absence of any material produced by the Plaintiffs to show that the property was an ancestral property. The Lower Appellate Court held that the Trial Court has failed to take into consideration the lease deed, sanctioned plan,

tax/assessment receipts which were produced by the Defendants. The Lower Appellate Court also held that the Plaintiffs could not have filed an application for temporary injunction in the absence of any prayer made in the main suit seeking permanent injunction against the Defendants. The Lower Appellate Court therefore held that the Trial Court has erred in granting injunction without considering the material on record.

5           The learned counsel appearing for the Petitioners i.e. the original Plaintiffs Shri Sameer Vaidya would seek to contend that in view of the construction of the staircase ingress and egress of the Plaintiffs to the two rooms which are in their occupation is affected. Pertinently that is not the case which was pleaded before the Trial Court nor the case which was argued before the Trial Court.

6           In my view, the said case therefore cannot be considered for considering the order passed by the Courts below. In so far as the grant of temporary injunction is concerned, in the instant case, as the order of the Lower Appellate Court discloses that the Lower Appellate Court has upset the order passed by the Trial Court for cogent reasons. In my view, the order passed by the Lower Appellate Court cannot be said to be suffer from any error of jurisdiction or any other illegality or infirmity for this Court to interfere in the writ jurisdiction of this Court. The above Writ Petition is accordingly

dismissed. Needless to state that the suit in question would be tried on its own merits and in accordance with law.

**[R.M.SAVANT, J]**