

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11308 OF 2014**

Arvind Bhikaji Bhor & ors.

..Petitioners

Vs.

Radhabai Dattatraya Bhor & Ors.

..Respondents

Mr. Milind Deshmukh for the Petitioners

**CORAM : R. M. SAVANT, J.
DATE : 29th JANUARY, 2015**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 19-9-2014 passed by the Learned District Judge-1, Khed, Pune, by which order, Misc Civil Appeal No.91 of 2014 filed by Respondent No.1 was partly allowed and resultantly the order dated 11-3-2011 passed in application Exhibit 5 moved by the Plaintiffs was modified to the extent that the injunction was restricted to restrain the Defendants from disturbing the possession of the Plaintiffs over the suit property till the decision of Regular Civil Suit No.85 of 2010.

2 The Suit in question being Regular Civil Suit No.85 of 2010 has been filed by the Petitioners/Plaintiffs for perpetual injunction restraining the Defendants from disturbing their possession in respect of the suit properties. It is the case of the Plaintiffs that the ancestral properties were partitioned on the basis of which they are in possession, whereas it is the case of the Defendants

that they were not so partitioned. In the Suit, the Plaintiffs filed an application for temporary injunction which was numbered as Exhibit5. The Plaintiffs in support of their case that they are in possession of the suit properties relied upon the 7/12 extracts.

3 The Trial Court having regard to the said material produced by the Plaintiffs held that the Plaintiffs are in possession of the suit properties which included the Well and therefore the Plaintiffs possession was required to be protected and that the Defendants were required to be restrained from drawing water from the Well in Gat No.549. The operative part of the order passed by the Trial Court granting temporary injunction reads thus :

“Defendant Nos.1 to 6, their servants, agents or any other person claiming through them are hereby temporarily restrained from disturbing the peaceful possession of plaintiffs and from forcibly taking water from Well installed in Gat No.548 till the final decision of suit.”

4 The Defendants carried the matter in Appeal against the said order dated 11-3-2011 by filing Misc Civil Appeal No.91 of 2014. The lower Appellate Court as indicated above partly allowed the Appeal by the impugned order dated 19-9-2014. The Lower Appellate Court adverted to the fact that the Well in question in Gat No.549 was a common Well and relied upon the joint statement made by the predecessor in title of the Plaintiffs one Bhika Nana Bhor and Dattu Nana Bhor which indicated that there was a common

Well in the suit land. The lower Appellate Court therefore held that the Appellant/Respondent No.1 has proved that she has a right to take water from the common Well. In fact even the Trial Court has adverted to the fact that in the document Exhibit 43 dated 29-6-1988, it was mentioned that there was a collective share in the Well installed in the suit property. The lower Appellate Court therefore deemed it appropriate to modify the injunction granted by the Trial Court to restrict it to the possession of the Plaintiffs over the suit property, however deleted the portion of the Trial Court's order relating to the common Well.

5 In my view, having regard to the reasons mentioned in the impugned order dated 19-9-2014, it would have to be said that the lower Appellate Court has for cogent reasons partly set aside the order passed by the Trial Court granting injunction. I do not find any error of jurisdiction or any illegality or infirmity for this Court to exercise its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

6 However, having regard to the fact that the parties are closely related and also having regard to the fact that the Suit is of the year 2010, the hearing of the Suit is expedited.

[R.M.SAVANT, J]