

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11155 OF 2013**

Sunil Bhalchandra Bhagat & Anr.

..Petitioners

Vs.

Bhagwan Jaywantrao Jadhav

..Respondent

Mr. Madhav Jamdar a/w Mr. Girish Shedge for the Petitioners

Mr. A. A. Joshi for the Respondent

**CORAM : R. M. SAVANT, J.
DATE : 19th AUGUST, 2015**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 29-10-2013 passed by the Learned District Judge-12, Pune, by which order the Appeal filed by the Petitioners being Misc Civil Appeal No.337 of 2013, came to be partly allowed and thereby the injunction granted by the Trial Court was modified to the extent that the Defendants, their servants, agents and anybody claiming through them were temporarily restrained from causing any kind of obstruction to the peaceful possession of the plaintiff over the Suit Survey No.10/7/3 till final disposal of the Suit.

2 The said Appeal was filed against the order dated 3-9-2013 passed in the application for temporary injunction filed by the Plaintiff in Regular Civil Suit No.1191 of 2013. The Plaintiff is the purchaser of a plot of land which bears Survey No.10/7/3 and the Defendants are the purchasers of land which

bears Survey No.10/7. The Plaintiff had filed the Suit in question seeking an injunction against the Defendants from encroaching upon the plot of land of the Plaintiff. Both the plots are out of a private lay out which was prepared. The Trial Court having regard to the material on record deemed it appropriate to allow the application for temporary injunction filed by the Plaintiff by order dated 3-9-2013..

3 The Defendants against the said order dated 3-9-2013 passed by the Trial Court carried the matter in Appeal by filing the said Misc Civil Appeal No.337 of 2013. In view of the fact that there was no dispute as regards the ownership of the respective plots i.e. Survey No.10/7/3 of the Plaintiff and Survey No.10/7 of the Defendants, as also there being no dispute as regards the fact that either of the parties were carrying out encroachment in the plot of the other party. The Lower Appellate Court came to a conclusion that the Trial Court had erred in granting the injunction to the extent granted by it by the said order dated 3-9-2013. The Lower Appellate Court observed that since the Defendants have admitted that they are not carrying out any encroachment on the plot of land of the Plaintiff and since the Plaintiff has admitted that he is not intending to carry out any encroachment on the plot of land of the Defendants, the Lower Appellate Court deemed it appropriate to partly allow the Appeal and confined the injunction granted to the Plaintiff to the land of the Plaintiff being Survey No.10/7/3.

4 The above Petition had come up for admission before this court on 29-11-2013, on which day the order dated 30-10-2013 passed by the Lower Appellate Court after the disposal of the Appeal, by which order the parties were directed to maintain status-quo on the Suit land in respect of construction of compound wall till 30-11-2013.

5 It is the contention of the Learned Counsel for the Petitioner that during the pendency of the above Petition and during currency of the ad-interim order which was passed continuing the said order dated 30-10-2013, the original Plaintiff has violated the same and carried out construction and has also encroached upon the plot of land of the Petitioners i.e. the Defendants. The Learned Counsel also draws this Courts attention to the amendment sought by the Plaintiff in the plaint in the matter of description of the Suit property and would therefore contend that in view of the amendment sought, the order of injunction granted in favour of the Plaintiff which has been modified by the order passed by the Lower Appellate Court would have to be vacated or modified.

6 In my view, it is not possible to accept the said contention of the Learned Counsel appearing for the Petitioners. If it is the case of the Petitioners that the Respondent herein i.e. the original Plaintiff has violated the ad-interim

order which has been passed by this Court, it is open for the Petitioners to file appropriate proceedings alleging the breach and violation of the said order. In so far as the other material which the Petitioners want this Court to take into consideration in the above Petition, since the said material was not before the Courts below when it tried the application for injunction, it would be open for the Petitioners / original Defendants to file an appropriate application before the Trial Court for variation or modification of the order of injunction. If any such application is filed, needless to state that the same would have to be considered on its own merits and in accordance with law.

7 However, in so far as the impugned order passed by the Lower Appellate Court is concerned, in my view, having regard to the material on record, no case for interdiction in the Writ Jurisdiction of this Court is made out, the Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]