

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APEAL FROM ORDER NO. 36 OF 2014
WITH CA/2594/2014 IN AO/36/2014

VENKAT RAMA CHAVAN
VERSUS
MOTABAI BANKAT CHAVAN AND OTHERS

.....
Advocate for Appellant : Mr. Salunke V. D.
Advocate for Respondent No.1 : Mr. B.R. Kedar
.....

CORAM : V. K. JADHAV, J.
DATED : 27th APRIL, 2016

PER COURT:-

1. Being aggrieved by the order dated 4.1.2014 passed below Exh.11 in R.C.A. No. 4 of 2012 by the learned District Judge -1, Latur, respondent No.1/1 before the lower appellate court (L.R. of original defendant before the trial court) has preferred this appeal.

2. Brief facts giving rise the present appeal, are as under:-

Respondent No.1/original plaintiff instituted a suit bearing R.C.S. No. 259 of 2008 (old No. 365 of 2007) before learned C.J.J.D. Renapur, District Latur for decree of perpetual injunction against father of the present appellant. After hearing, the learned Judge of the trial court, by its judgment and decree dated 12.12.2011, dismissed the suit. Being aggrieved by the same, respondent No.1/original

plaintiff has preferred R.C.A. No. 4 of 2012 before District Court, Latur. During pendency of the appeal, respondent No.1/original plaintiff has also filed an application Exh.11 under Order 39 Rule 1 and 2 r.w. Section 151 of C.P.C. for issuance of order of injunction to restrain the other side from disturbing her possession over the suit land ad-measuring 71 R of Gat No. 899 situated at village Renapur, Taluka Renapur, District Latur. Learned District Judge No.1, Latur, by its impugned order dated 4.1.2014, allowed the said application and thereby restrained the respondents therein from obstructing the possession of appellant/original plaintiff over the disputed land till disposal of the appeal. Being aggrieved by the same, present appellant/original respondent before the lower appellate court has preferred this appeal.

3. Learned counsel for the appellant submits that the trial court, by its judgment and decree dated 12.12.2011, dismissed R.C.S. No. 259 of 2008 by recording findings on all issues in the negative. The trial court has recorded a finding in the negative on the issue by which the plaintiff has to prove her possession over the suit land. Learned counsel submits that there is no evidence of partition among the parties and even though the trial court has observed about the same in para No. 15 of the judgment, the lower appellate court at the stage of deciding application Exh.11, erroneously observed that there

is evidence of partition amongst the parties. Learned counsel submits that no case is made out by respondent No.1-original plaintiff before the lower appellate court for grant of injunction, and in absence of any *prima face* case and even though the balance of convenience does not lie in favour of respondent No.1-original plaintiff, the lower appellate court has allowed application Exh.11.

4. Learned counsel for respondent No.1-original plaintiff submits that the order of temporary injunction was in force till disposal of the suit before the trial court. Though the original defendant Rama had claimed possession over the entire land ad-measuring 1 H 42 R, in cross examination, admitted unequivocally that all lands were equally divided between him and his brother Rupala. Learned counsel submits that even he has admitted that as per his application dated 30.5.1986 mutation entry No. 107 was sanctioned and since then they are in possession of their respective shares. Learned counsel submits that in view of the above admission, it is clear that the land ad-measuring 71 R out of land Gat No. 899 was allotted to the share of Rupala and the possession thereof was also delivered to him. Learned counsel submits that the trial court has not considered the same in its proper perspective and lower appellate court, by considering the same, has rightly allowed application Exh.11.

5. Admittedly, the order of temporary injunction was remained in force till disposal of the suit. Furthermore, certain admissions have been given by original defendant Rama before the trial court where he was subjected to cross examination at great length by the other side. The lower appellate court has rightly observed that the trial court has overlooked these vital admissions given by defendant Rama. It appears that the learned Judge of the trial court dismissed the suit on the ground that respondent No.1/plaintiff has failed to prove as to how she became the owner of land ad-measuring 71 R. As per the admissions given by defendant Rama, if partition of all the lands have been effected between him and Rupala equally and as per the mutation entry 107, if they are in separate possession of their respective shares, the respondent-plaintiff, who is legal heir of deceased Rupala, has made out a *prima face* case for issuance of order of temporary injunction. The balance of convenience certainly lies in her favour and she may suffer irreparable loss if the injunction would have been refused by the lower appellate court. I do not find fault in the impugned order passed by learned district Judge. There is no substance in the appeal. Needless to say that the observations made by the lower appellate court while deciding application Exh.11, and even by this Court, are strictly to the extent of deciding application Exh.11 and same shall not cause any prejudice to either of the parties at the time of final hearing of Regular Civil Appeal No.

04 of 2012. Hence, I proceed to pass the following order :-

O R D E R

- I. Appeal is hereby dismissed with no order as to costs.
- II. Pending Civil Application No. 2594 of 2014 is disposed of.

(V. K. JADHAV, J.)

rlj/