

Sequeira

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

WRIT PETITION NO. 3006 OF 2015

Shri Chintan Narayan Yadav.

.. Petitioner

Vs.

Shri Ramchandra Kisan Yadav.

.. Respondent

Mr.D.D.Rananaware, for the Petitioner.

Mr.Milind Deshmukh, for the Respondent.

***CORAM : N.M.Jamdar, J.
Wednesday, 24 August 2016.***

P.C. :

Rule. Rule made returnable forthwith. The learned counsel for the Respondent waives service. By consent taken up for disposal forthwith.

2. The Petitioner challenges the order dated 15 March 2015 passed by the learned Civil Judge Junior Division, Daund and District Judge, Baramati dated 6 January 2015. By the impugned orders both the Courts have granted an order of temporary injunction in favour of Respondent-Plaintiff.

3. Heard learned counsel for the parties. There is a dispute between the parties as regards the location of the suit property. The Petition had come up on board on 20 October 2015 and the learned Single Judge (R.M.Savant, J.) passed a detailed order as follows-

'1 Though there is a concurrent finding recorded against the Petitioner – original Defendant, the issue that arises is as regard the location of Gat No.137/1/6. The said Gat number is a part of the land originally owned by one Vasant Yadav who had allotted the land belonging to him by dividing it into two halves i.e. one admeasuring 1 Hecter 81 Ares which bears Gat No.137/1/3 and second also admeasuring the same which is Gat No.137/1/6. The son of the said Vasant Yadav i.e. Narayan Yadav sold of his share i.e. 1 Hecter 81 Ares to the Plaintiff by a sale deed dated 08/07/2003 wherein the southern boundary was shown as the land of the said Pushpa Yadav. Thereafter the vendor i.e. Narayan Yadav executed a correction deed in favour of the Plaintiff on 20/07/2012 wherein the boundary on the south was corrected to Yavatgaon and Yavat Station Road which is the southern boundary of the land of the said Pushpa Yadav. Since undisputedly the Plaintiff has purchased only 1 Hecter and 81 Ares from the said Narayan Yadav, how the boundary was corrected to Yavatgaon and Yavat Station Road therefore begs an answer. It is the case of the Petitioner original Defendant, who is the son of the said Narayan Yadav that the portion belonging to the said Narayan Yadav has the southern boundary as the land of Pushpa Yadav and therefore in the guise of the correction deed even the land of the said Pushpa Yadav is sought to be usurped by the Plaintiff, whereas it is the case of the Plaintiff i.e. the Respondent herein that the land of the said Pushpa Yadav i.e. Gat No.137/1/6 is across the Yavatgaon and Yavat Station Road and therefore according to the learned counsel for the Respondent Shri Milind Deshmukh, the said road divides the two properties i.e. Gat No.137/1/3 and Gat No.137/1/6. The said aspect is therefore a defining aspect viz. as regards location of Gat No.137/1/6. It would have to be borne in

mind that the Plaintiff would ultimately be entitled to the injunction of the area of only 1 Hector and 81 Ares, and would not be entitled to injunction in respect of the area which he has not purchased. Hence the District Superintendent of Land Records, Pune is directed to submit a report to this Court as regards the exact location of Gat No.137/1/6 vis-a-vis the Yavatgaon and Yavat Station Road by showing it on a map prepared by him which can be submitted along with the report in a sealed cover. The same to be done within six weeks from date. For the present the above Writ Petition is adjourned to 08/12/2015. Until then the parties are directed to maintain status quo as on date.'

It is observed by the learned Single Judge that the most important aspect of the matter is as regards the location of Gat No.137/1/6. The learned Judge has observed that the Respondent-Plaintiff will be entitled to an injunction of the area of only in respect of 1 Hector 81 Ares and would not be entitled to an injunction in respect of the area he has not purchased. Therefore, the learned Single Judge has found that the District Superintendent of Land Records, Pune needs to file a report as regards the exact location of Gat No.137/1/6.

4. In view of this position, the aspect of grant of temporary injunction will have to be decided keeping in mind the report that is to be submitted by District Superintendent of Land Records. This will entail factual inquiry and adjudication of factual controversy. Therefore, I am of the opinion that in view of the order passed by this Court on 20 October 2015, the proceedings will have to be

remanded to the learned District Judge for consideration of the Miscellaneous Civil Appeal No.34 of 2013 afresh. The learned counsel for the parties state that the District Superintendent of Land Records, Pune has not submitted a report as on date perhaps because the order has not been communicated to him. The learned counsel for the Respondent submits that the Commissioner should specify the location of the house of the Respondent in the map. The learned counsel for the Petitioner opposes and states that this is not the scope of the proceedings. It is not necessary to pass any direction in that regard as while preparing the map the Commissioner will no doubt incorporate such information as is necessary for disposal of the suit, such as structures standing on the lands, etc.

5. The Writ Petition is accordingly disposed of as under -

- i. The order passed on 6 January 2015 in Miscellaneous Civil Appeal No.34 of 2013 is quashed and set aside and the Miscellaneous Appeal No.34 of 2013 stands restored to file of District Judge, Baramati.
- ii. District Superintendent of Land Records, Pune will submit a report as directed by this Court on 28 October 2015, to the District Judge, Baramati to be filed in Miscellaneous Civil Appeal No.34 of 2013.

iii. Registry shall communicate this order to the District Superintendent of Land Records, Pune forthwith.

6. Till the disposal of the Appeal, the ad-interim order granted by this Court on 20 October 2015 to continue. The parties will appear before the learned District Judge, Baramati on 27 September 2016. The Misc. Civil Appeal will be considered on its own merits and in light of what is observed in the order dated 20 October 2015.

(N.M.Jamdar, J.)