

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5063 OF 2016**

Mr. Ram Shamji Karadi alias Patil
and Ors.

Petitioners

Vs

Mr. Sanjay Kanha Karadi alias
Patil and ors.

.. Respondents

Mr.A.S.Khandeparkar a/w A. Karandikar i/b Khandeparkar and Associates, Advocates for Petitioners.

S.M Kazi a/w Mr. Anoop Sharma, Advocates for Respondent no. 1 to 3.

CORAM : R.G.KETKAR,J.
DATE : 02/05/2016

PC:

1. Heard Mr. A.S.Khandeparkar, learned counsel for the petitioners and Mr. S.M.Kazi, learned counsel for respondents no. 1 to 3 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 28.3.2016 passed by the learned 2nd Jt. Civil Judge, Senior Division, Panvel below Exh.45 in Spl. Civil Suit No.245 of 2015. By that order, the learned trial Judge rejected the application made by the defendants for cross examination of persons who filed affidavits in support of plaintiffs' application for interim injunction.

3. Respondents no. 1 to 3, hereinafter referred to as 'plaintiffs,' have filed suit for declaration that they have 1/9th

share in the compensation as also in plot to be allotted as per 12.5% scheme, among other reliefs. During the pendency of the suit, the plaintiffs filed application for interim relief. The plaintiffs prayed for injunction restraining the defendants from creating third party interest as also carrying out construction in respect of plaintiff's 1/9th share in the plot to be allotted as per 12.5% scheme. In support of the application, the plaintiffs have filed affidavits of S/shri Hira Dhau Patil, Ganpat Nagu Patil, Tulshiram Sukir Patil, Subodh Ambo Patil and Madhukar Janu Bhagat. The defendants filed application at Exhibit- 45 seeking permission to cross examine these persons. By the impugned order, the learned trial Judge rejected the application. It is against this order, the defendants have instituted the present petition.

4. In support of this petition, Mr. Khandeparkar submitted that in the affidavits filed by these persons, they have made statement about relationship of the plaintiffs with the defendants. The defendants, therefore, want to cross examine these persons. He relied upon Order 39, Rule 1 of C.P.C to contend that while considering the application under Order 39, fact can be proved by affidavit **or otherwise**. In view thereof, the defendants are entitled to cross examine the persons who filed affidavits in support of the plaintiffs' application for interim relief.

5. On the other hand, Mr. Kazi relied upon the decision in the

case of Keshav Punjiba Kadam and Ors. Vs Dattatraya Punjiba Kadam and Ors. decided on 10.7.2013, to contend that by application Exhibit-45, the defendants want to enlarge the scope of application for interim injunction and will convert that application into a full-fledged trial. It will also defeat the very purpose of disposing the application for interim injunction in a summary manner.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. In my opinion, the contention advanced by Mr. Kazi deserves acceptance. In the case of Keshav Punjiba Kadam (supra), it was held that the Court while dealing with application for injunction has to keep in mind the fact that the disposal of the application has to be in a summary manner. In such circumstances, it cannot be said that the party to the suit as a matter of right, is entitled to lead oral evidence for deciding the application for interim injunction under Order 39, Rule 1. If such request is made, it will enlarge the scope of application for interim injunction and it will convert into a full-fledged trial and defeat the very purpose of disposing the application for interim injunction in a summary manner.

7. While rejecting the application, the learned trial Judge held that, at this stage, request made by the defendants to cross examine the persons who filed affidavits in support of the

plaintiffs' application cannot be entertained. I do not find that the learned trial Judge has committed any error in this regard. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)