

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 5526 OF 2016

Bapuso Ganpati Yadav

...Petitioner

Versus

Yashwant Govind Suryavanshi

...Respondent

....

Mr.Uday P. Warunjikar, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 5th May, 2016

P.C.

1. Not on board. At the request of Mr. Warunjikar, taken up for admission.
2. Heard Mr. Uday Warunjikar, learned Counsel for the petitioner, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 27.4.2016 passed by learned Civil Judge, Junior Division at Kadegaon below Exhibit-41 in Regular Civil Suit No.90/2014. By that order, learned trial Judge allowed the application at Exhibit-41 made by the respondent, hereinafter referred to as the plaintiff, seeking police protection for carrying out the work

of repairs of cement poles situate in area admeasuring 0.5 Are out of Gat No.1107.

4. The plaintiff has instituted the suit against the petitioners, hereinafter referred to as defendant No.1 and seven others. The plaintiff has sought perpetual injunction against the defendants No.1 to 4 from disturbing his peaceful possession in respect of 5 Ares out of Gat No.1107 in all admeasuring 3 Hectare 54 Ares situate at Kadepur, Taluka-Kadegaon, District-Sangli (for short, 'suit land'). In the alternative for partition and separate possession of suit property in the event of the Court coming to the conclusion that there is no partition by metes and bounds.

5. During pendency of the suit, the plaintiff took out application Exhibit-5 under Order 39 Rules 1 and 2 of Code of Civil Procedure, 1908 (for short, 'CPC') restraining defendants No.1 to 4 from disturbing his possession. After hearing both sides, learned trial Judge allowed the application on 24.7.2015 and issued injunction restraining defendants No.1 to 4 or any one claiming through them from disturbing the possession of the plaintiff till decision of the suit or further order whichever is

earlier.

6. Being aggrieved by this order, Misc. Civil Appeal is preferred before District Court and the same is pending. It is however material to note that there is no interim order operating in the said appeal.

7. The plaintiff thereafter filed application dated 23.9.2015 at Exhibit-41 *inter alia* contending that on 24.7.2015, learned trial Judge has allowed the application for injunction. On 9.9.2015, while the plaintiff was peacefully cultivating the suit property, he went there for repairs of cement poles. That time, the defendants have obstructed him. On the very next date i.e. on 10.9.2015, he lodged complaint to the Police Inspector attached to Kadegaon police station enclosing therewith order passed by the trial Court. It is his case that the Police Inspector in turn informed him that the Court has not passed any order directing the police to extend police protection. The plaintiff, therefore, filed application Exhibit-41 praying for police protection for carrying out repair works in the suit property. Defendants No.1 to 4 filed reply dated 4.3.2016 at Exhibit-48 opposing the application. By the impugned order,

learned trial Judge allowed that application.

8. Defendant No.1 thereafter filed application dated 2.12.2015 at Exhibit-44 for appointment of the Court Commissioner which is rejected on 27.4.2016. The present petition is instituted challenging the order dated 27.4.2016 passed below Exhibit-41.

9. In support of this petition, Mr. Warunjikar strenuously submitted that aggrieved by the order dated 27.7.2015 passed by learned trial Judge, Misc. Civil Appeal is pending in the District Court. He submitted that the suit is for injunction simplicitor. By filing application Exhibit-41, the plaintiff intends to collect evidence. He further submitted that in the suit, the plaintiff has not sought any relief as claimed in the application at Exhibit-41. In other words, the plaintiff cannot enlarge the scope of the suit by filing application Exhibit-41 seeking police protection. In any case, interim relief can be granted in the aid of final relief. As no final relief is claimed in terms of relief claimed in the application Exhibit-41, the learned trial Judge was not justified in allowing the application. Lastly he submitted that the impugned order may be stayed for a period of 10 days so as to enable the

petitioner to move the District Court. He submitted that the impugned order gives rise to fresh cause of action and, therefore, may be stayed for a period of 10 days so as to enable the petitioner to move learned District Court where Misc. Civil Appeal is pending. Lastly, he submitted that in any case the Court has no power to grant police protection for implementing the order of injunction.

10. I have considered the submissions advanced by learned Counsel appearing for the petitioner. I have also perused the material on record.

11. Perusal of the order dated 24.7.2015 below Exhibit-5 and in particular paragraph-17 thereof shows that defendants No.1 to 4 have entered into various transactions for sell of the lands between 1998 and 2014. In paragraph-18, learned trial Judge has observed that almost entire Gat No.1107 has been sold by defendants No.1 to 4. As noted earlier, gat No.1107 admeasures in all 3 Hectare 54 Ares inclusive of 16 Are pot-kharaba. After recording these findings, learned trial Judge further observed that defendants No.1 to 4 have failed to prove that gat NO.1107 is cultivated by them jointly. They failed to

prove their peaceful and physical possession over Gat No.1107. On the contrary, the plaintiff proves his *prima facie* case that he has purchased the suit property from defendant NO.1 and that he is in possession since 2002. The plaintiff is possessing the suit property for more than 12 years and defendants cannot dispossess him without following due process of law. Even if the plaintiff is a trespasser, still defendants Nos.1 to 4 cannot dispossess him without following due process of law.

12. It is no doubt true that Misc. Civil Appeal challenging said order is pending before the learned District Court. It is equally true that there is no interim relief operating in favour of defendants No.1 to 4. In other words, injunction is operating from 24.7.2015. It is in this context one has to consider the prayer made by the plaintiff in Exhibit-41. The plaintiff specifically contended that despite injunction order issued in his favour, defendants No.1 to 4 are causing obstruction to his peaceful possession and also obstructing him from carrying out repair works. After considering the reply filed by defendants No.1 to 4 and also the decision cited before him, learned trial Judge has allowed the application.

13. In the case of ***Nirabai J. Patil vs. Narayan D. Patil, 2004(3) Bom.C.R. 226***, this Court has held that the object of Section 36 and Order 39, Rules 2-A, 11 of C.P.C. is to ensure that orders passed by Court of law are implemented and obeyed by all concerned. Section 151 of Code saves inherent powers to Civil Court to make such orders as may be necessary for meeting the ends of justice. Under Section 151 of Code, Court has power to direct police authorities to give necessary aid for implementation or for enforcing order of temporary injunction.

14. In view of above discussion, I do not find that the learned trial Judge has committed any error while granting police protection to the plaintiff. Hence, Petition fails and the same is dismissed. It is however made clear that the observations made herein are only for the purpose of finding out the correctness of the impugned order. The learned District Judge seized of the Misc. Civil Appeal will decide the same uninfluenced by the observations made herein. Order accordingly.

(R. G. KETKAR, J.)