

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 806/2014

Mohd. Shafi Hussain

... Applicant

V/s.

Kalpana Patil

... Respondent

Mr. hemant S. Deshpande for the Applicant

**CORAM: K.K. TATED, J.**  
**DATED : JUNE 21, 2016**

**P.C. :**

1. Heard the learned counsel for the applicant. By this Civil Revision Application the applicant plaintiff challenges the order passed by the Trial Court below Exhibit- 5 dated 11.10.2013 in Special Civil Suit No.292/2013 by which the Trial Court dismissed the application made by the plaintiff for injunction restraining the respondent defendant from disturbing his possession in respect of the suit property i.e. land admeasuring 99 gunta being Sy.No.94 and land admeasuring 49.8 guntha being Sy.No.94 situated at Thane. The order of the Trial Court was confirmed by the appellate court in Misc. Civil Appeal No.6/2014 by judgment dated 20.03.2014. Hence, the Civil Revision Application.

2. Few facts of the matter are as under:

The applicant instituted Special Civil Suit No. 292/2013 restraining the respondent defendant for an order of permanent

injunction from disturbing their possession in respect of the suit property. Following are the prayers of the plaintiff in his plaint:

(a) Pending hearing and final disposal of the present suit, the defendants, its office bearers, agents, servants, ominees, and/or any 3<sup>rd</sup> person/s claiming through and under them, be restrained by an order of permanent injunction of this Hon'ble Court from encroaching/usurping and/or illegally erecting compound wall/structure of the plaintiff i.e. the suit property or any portion thereof without following due procedure of law.

(b) It may be declared that the plaintiffs are the owners, in exclusive use, occupation and physical possession of the suit property.

(c) That the defendants may be directed by an order of mandatory injunction to remove the structure/ compound wall (if any) erected illegally in, upon or over the suit property.

(d) Exparte relief in terms of prayer (a) above be granted in favour of the plaintiffs.

(e) .....

(f) .....

3. In that suit, the plaintiff made an application below Exhibit- 5 for injunction, which was rejected by the Jt. Civil Judge, Senior Division Thane on 11.10.2013 holding that the plaintiff failed to prove his possession over the suit premises. The Trial Court, in paragraph 12 of the impugned order recorded that the defendant placed on record 7/12 extract for the year 2011-12 and 2012-2013 showing the suit property in their name.

4. Thereafter the plaintiff preferred Misc. Civil Appeal No.6/2016. Same was also dismissed by the learned District Judge-8 , Thane by

judgment dated 20.03.2014 holding that the plaintiff failed to produce on record any documentary evidence to show that they were in possession of the suit premises. The appellate court, in paragraph 6 of the impugned order held that the plaintiff placed on record the electricity bill to show their possession over the suit premises. The appellate court held that the electricity bill does not show city survey number and/or description of the property. Hence, the Civil Revision Application.

5. The learned counsel for the applicant, during the course of arguments, placed on record the compilation of list of documents. Same is taken on record. The learned counsel for the plaintiff submits that both the courts below failed to consider the fact that the plaintiff purchased the suit property. He submits that both the documents, though not registered, same shows possession of the plaintiff. He submits that the sale deed placed on record by the defendant is bogus document. He submits that the husband of defendant No.1 Pandharinath executed sale deed in favour of his wife on the basis of Power of Attorney of the original owner. He submits that even in the sale deed, Pandharinath stated that he received sum of Rs.2 crores in cash from his wife. He submits that these facts were not considered by the Trial Court as well as appellate court at the time of deciding the application of the plaintiff. Hence, both the orders are required to be set aside and the respondent/ defendant be restrained by an order of injunction from disturbing the plaintiff's possession over the suit property till hearing and final disposal of the suit.

6. Heard the learned counsel for the plaintiff at length. I have gone through the copy of the plaint, impugned orders passed by the courts below as well as the compilation of documents placed on record by the plaintiff. It is to be noted that in the present proceedings the Trial Court dismissed the plaintiff's application for injunction on 11.10.2014. Thereafter the plaintiff preferred Misc. Civil Appeal No.6/2014. During the course of arguments, the advocate for the plaintiff admitted that in appellate court, interim protection was not granted. This shows that for last more than 3 years, there is no injunction in favour of the plaintiff. Both the courts below categorically held that the defendant claimed their possession on the basis of the registered sale deed as well as the Power of Attorney. It is to be noted that the injunction cannot be granted against a real owner. In the present proceedings, the sale deed placed on record by the plaintiff to show his possession, cannot be considered because, those documents were not registered. Even 7 x 12 extract of land shows the name of defendants.

7. Considering these facts, I do not find any reason to interfere with the concurrent findings of fact recorded by both the courts below. Hence, Civil Revision Application stands rejected.

**(K.K. TATED, J.)**