

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO. 6094 OF 2014

Shri. Shripati Laxman Kahane	... Petitioner
V/s.	
Shri. Shankar Maruti Gunjal & Ors.	... Respondents

Mr. Dhannajay Rananaware for the Petitioner.
Mr. D.S. Adsul for the Respondent No.1.

**CORAM : K. K. TATED, J.
DATED : 30/06/2016**

PC.:

. Heard learned Counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the petitioner Defendant challenges order dated 21.03.2014 passed by learned District Judge-5, Pune in Misc. Civil Appeal No. 72 of 2013 restraining defendants from obstructing the possession of the plaintiffs over the suit property i.e. plot no. 81, Gat No. 58/59 admeasuring 00.02 Hecter at village Koyali, Taluka Shirur, Pune till the hearing and final disposal of Regular Civil Suit No. 417 of 2012.

3 In the present proceeding, the respondent plaintiffs filed Regular Civil Suit No. 417 of 2012 for an order of injunction restraining the defendants from disturbing his possession in respect of suit property. In that suit, the plaintiffs preferred application below Exh.5 for an order of injunction. That application was rejected by trial court on

28.01.2013. Thereafter, the plaintiffs preferred Misc. Civil Appeal No. 72 of 2013 in the District Court at Pune. That Misc. Appeal was allowed by the Appellate Court by Judgment dated 21.03.2014 restraining defendants from obstructing the possession of the plaintiffs over the suit property till the decision of the suit. Hence, the defendant No.1 preferred the present Writ Petition.

4 The learned counsel for the Defendant No.1 submits that the Appellate Court erred in coming to the conclusion that the plaintiffs proved prima facie case for injunction. He submits that in the present proceeding, the plaintiffs placed on record photocopy of allotment letter in respect of suit property. He submits that the defendants filed proceeding before the Revenue Authority. He submits that Revenue Authority held that the plaintiffs carried out unauthorised construction on the suit property and that required to be demolished. He submits that in spite of this fact, the Appellate Court has granted injunction restraining the defendants from obstructing the plaintiffs possession over the suit property. He submits that even the State of Maharashtra has filed their written statement before the trial court in which they specifically stated that the suit property was allotted to the Defendant No.1. He submits that the plaintiffs failed to produce on record original copy of allotment letter and he relied on photocopy only. These facts were not considered by the Appellate Court at the time of passing the impugned order dated 21.03.2014. Hence, order passed by the Appellate Court is required to be set aside.

5 On the other hand, learned counsel for the respondent plaintiff

submits that since 1992, he is in possession of the suit premises on the basis of allotment letter. He submits that as soon as the allotment letter was issued in favour of plaintiff, he deposited sum of Rs.500/- in the State Bank of India by Challan. He submits that the original documents were handed over to the Rehabilitation Officer. In terms of that, the said officer given acknowledgment to that effect. He submits that he raised loan on the said property. At the time of raising loan the Revenue Authority has given no objection to that effect also. Considering this fact, the order passed by the Appellate Court is according to law and no need to interfere with the well reasoned order.

6 I heard both the sides at length. The Appellate Court has considered the fact that the plaintiff is in possession of the suit property since 1992. He has constructed the house on the suit land. Apart from that, he has also raised a loan and at the time of raising loan, the Revenue Authority has given no objection. Considering these facts, the Appellate Court has passed injunction restraining the defendants from disturbing the plaintiff's possession over the suit property. Whether the allotment letter issued by the Rehabilitation Officer in favour of the plaintiff is genuine or not that required to be decided at the time of final hearing. Admittedly, since 1992, plaintiff is in possession of the suit premises. He has constructed house on his own costs. He has also raised loan by taking no objection from Revenue Authority on the suit premises. Considering these facts, and as the suit filed by the plaintiff is pending for hearing on its own merits, I do not find any reason to interfere with order passed by the Appellate Court dated 21.03.2014, but at the same time plaintiff should not create any third party rights in

respect of suit property till the hearing and final disposal of special civil suit No. 417 of 2012.

7 At the time of argument, the learned counsel for the plaintiff submits that plaintiff will not create third party rights in respect of suit property.

8 Considering these facts, following order is passed:

a) Writ Petition stands rejected.

b) The respondent plaintiff is restrained by an order of injunction from creating any third party rights in respect of suit property till the hearing and final disposal of special civil suit No. 417 of 2012.

(K.K.TATED, J.)