

JPP

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

WRIT PETITION NO. 5853 OF 2011

1. Mr. Balasaheb Ramchandra Bhandwalkar (Son)

Age : 65 years, Occupation : Agriculture,
both residing at : Sasvad, Bhandwalkar Vasti,
Sasvad, Behind Court, Taluka : Purandar,
District : Pune.

2. Smt. Housabai Ramchandra Bhandwalkar,

Age : 75 years, Occupation : Nil,
Since deceased through legal heirs and
representatives i.e. through Petitioner
Nos.1 and 4.

3. Mr. Deepak Balasaheb Bhandwalkar

Age : 34 years, Occupation : Agriculture.

4. Mr. Prakash Ramchandra Bhandwalkar

Age : 61 years, Occupation : Retired.

5. Mr. Sandeep Prakash Bhandwalkar

Age : 30 years, Occupation : Job.

6. Mr. Kiran Prakash Bhandwalkar

Age : 25 years, Occupation : Job

Respondent Nos. 3 to 6 residing at :
Plot No.100, Ramoshiwadi Gokhale
Nagar Pune – 16.

... Petitioners.
(Orig.Deft.Nos. 1 to 6)

V/s.

1. Mr. Dattatray Khandu Bhandwalkar
Age : 60 years, Occupation : Agriculture
2. Mr. Pralhad Dattatray Bhandwalkar
Age : 36 years, Occupation : Agriculture
(Since deceased through their L.Rs.)
- 2A. Smt. Alka Pralhad Bhandwalkar,
Age : 30 years, Occupation : Nil,
- 2B. Mr. Siddesh Pralhad Bhandwalkar
Age : 5 years, Occupation : Nil,
3. Kum. Vijay Kailash Bhandwalkar,
Age : 15 years, Occupation : Education
4. Kum. Kiran Kailash Bhandwalkar,
Age : 14 years, Occupation : Education
5. Smt. Pushpa Kailash Bhandwalkar,
Age : 33 years, Occupation : Nil,

Respondent No.5 for herself & as Guardian
of Respondent Nos. 3 & 4.

All above Respondent Nos. 1 to 5
residing at : Sasvad, (Ramoshi Wada),
Near Kodit Naka, Sasvad,
Taluka : Purandar, District : Pune.

... Respondents.
(Orig.Plaintiffs)

- 6A. Smt. Mangal Vilas Jadhav
- 6B. Mr. Audhumbar Vilas Jadhav
- 6C. Kum. Poornima Vilas Jadhav
- 7A. Mr. Dilip Ganpat Khomne
- 7B. Alka Ganpat Khomne
- 7C. Aruna Ganpat Khomne.

Respondent Nos.6A to 6C & 7A to 7C
All residing at : Ramoshi Wadi,
Survey No.100, Gokhale Nagar,
Pune – 16.

... Respondent
Nos.6A to 6C & 7A
to 7C are Orig. Defts. 7 & 8.

Mr. P.B. Gujar for the Petitioners.

Mr. Nilesh Wable i/b. S.R. Ghanwat for Respondents 1, 2-A and 5.

CORAM : N.M. Jamdar, J.

25 August, 2016.

Oral Judgment :-

By this Petition the Petitioners challenge the order passed by the learned Civil Judge, Junior Division, Saswad dated 3 February 2011 rejecting the application filed by the Petitioners – Defendants under Order 39 Rule 2-A of the Code of Civil Procedure.

2. The Suit bearing No. 111 of 2005 was filed by the Respondents – Plaintiffs seeking relief of partition of the suit property. The Respondents – Plaintiffs moved an application for temporary injunction. In this application for temporary injunction notice was issued to the Petitioners calling upon as to why the temporary injunction should not be granted and in the meanwhile, the parties were directed to maintain status-quo and the proceedings were adjourned to 12 July 2005. On 26 April 2010, the

Respondents – Plaintiffs executed a sale deed. The Petitioners moved an application under Order 39 Rule 2-A on the ground that the Respondents – Plaintiffs have breached the order of status-quo and therefore, their property be attached and they be sent to civil prison. The learned Civil Judge, after examining the record found that the order of status-quo was in force upto 12 July 2005 and it was specifically not continued and therefore, it cannot be said that the Respondents – Plaintiffs have committed any breach of injunction and accordingly proceeded to pass the impugned order.

3. Heard the learned Counsel for the parties.

4. The nature of the provisions that the Petitioners sought to invoke need to be kept in mind. The Petitioners are seeking a drastic order of attachment of property of the Respondents – Plaintiffs and for committing them to civil prison. Further, the Petitioner has approached this Court invoking its power of superintendence. If the view taken by the learned Judge is reasonably possible and the order is within jurisdiction then this Court will not ordinarily interfere in such orders under its power of superintendence. With this perspective in mind the rival contentions need to be considered.

5. The Petitioners have produced and relied upon the order dated 12 July 2005. They have also relied on the order which states

that the application for temporary injunction to be heard alongwith the Suit. The specific ground is given by the learned Judge in the impugned order that the order of status-quo was only upto July 2005. Therefore, it is necessary for the Petitioners, if the Petitioners wanted to assail the findings, to show a specific order by which the order of injunction was continued. The learned Counsel for the Petitioners has sought to rely upon the decision in the case of *Govinda Bhagoji Kamable and Ors. v/s. Sadu Bapu Kamable and Ors.* reported in *2005(1) Mh.L.J. 651*, wherein the learned Single Judge had interpreted the word “meanwhile”. The learned Single Judge considered this issue as the phrase “in the meanwhile” and “till further orders” are generally employed by the Court granting interim injunction, and since there is no certainty about these terms, confusion often takes place in the mind of the litigants. Therefore, the learned Single Judge found it necessary to clarify the meaning of these terms. The issue before the learned Single Judge was not of the one at hand where the question of Civil imprisonment for a party was in issue. In fact this decision itself shows that by a judicial pronouncement, the word “meanwhile” had to be interpreted to clear confusion in the mind of the litigants.

6. The Plaintiffs had moved an application for temporary injunction. It is on the application of the Plaintiffs, without hearing the Petitioners that this protective order was passed. Generally such

ex-parte orders are passed to protect the Plaintiff. If the order was to protect the Petitioners also the Petitioners ought to have moved for continuation of this order. In the order dated 12 July 2005 granting status-quo and issuing notice to the Petitioners, the learned Civil Judge has not specified that this order would operate strictly against the Respondents – Plaintiffs. This order appears to be a routine order wherein a notice is issued to the Defendants and parties have directed to maintain status-quo that too upto a particular date. This aspect has to be considered in light of the relief that the Petitioner seeks in this Petition.

7. The Respondents – Plaintiffs have not challenged the impugned order and therefore, they cannot contend that the interim order has continued beyond 12 July 2005. Therefore, there is no restraint upon the Petitioner after 12 July 2005. In view of this position, after 12 July 2005, there is no interim order in the suit by which either of the parties are bound and if the Respondents – Plaintiffs have sold their portion and since the suit is for partition, the Petitioners can always seek a prayer that the portion they have sold should be adjusted against their share.

8. The view that the order dated 12 July 2005 was not in existence when the sale deed was executed by the Respondents – Plaintiffs, is a possible view, I am not inclined to exercise the power

of superintendence to reverse the order of the learned Civil Judge and direct attachment of the property of the Respondents – Plaintiffs or sent them to civil prison. Whatever be the consequences of the Respondents – Plaintiffs selling the suit property, will be considered on the merits of the dispute between the parties and the learned Civil Judge can always pass an appropriate order in view of the fact that portion of the property is sold by the Respondents – Plaintiffs. No further orders are necessary. Writ Petition is accordingly dismissed. Rule is discharged. No order as to costs.

(N.M. Jamdar, J.)