

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10070 OF 2013**

1.Shri Ragho @ Raghunath
Deoram Mate and ors.

..Petitioners

VS

1.Shri Shivaji Nivrutti Mate and
Ors.

.. Respondents

Mr. M.M.Sathaye, Advocate for Petitioner.
Mr. N.V.Bandiwadkar, Advocate for Respondent No.3.

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

PC:

1. Heard Mr.M.M.Sathaye, learned counsel for the petitioner and Mr.N.V.Bandiwadkar, learned counsel for respondent no.3 at length. Upon taking instructions from petitioner no.5-Vasant Raghunath Mate who is present in the court, Mr. Sathaye seeks deletion of respondents no.1 and 2. On the motion made by Mr Sathaye, leave to delete as prayed for is granted. Amendment shall be carried out forthwith.

2. Rule. Mr.Bandiwadkar waives service for respondent no.3. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

3. By this petition under Article 227 of the Constitution of India, the petitioners have challenged judgment and order dated 21.5.2013 passed by the learned District Judge-6, Nashik in Civil

Misc. Appeal No.101 of 2011 in so far as refusing to grant injunction restraining defendants from causing interference and obstruction to plaintiffs' possession over land admeasuring 4 H. 65.5 Ares of Survey no.228/2, in all admeasuring 5H 20.5 Ares, situate within the municipal limits of Nashik Municipal Corporation till final disposal of the suit. In other words, the plaintiffs are not aggrieved by the impugned order whereby the learned District Judge issued injunction restraining defendants from creating third party interest in the suit land till final disposal of the suit. It is relevant to note here that the defendants have also not challenged the impugned order. In other words, they have accepted the impugned order.

4. Earlier the matter had come to this court by way of Writ Petition No.3004 of 2012. After hearing the parties, petition was partly allowed and operative part of the order reads thus;

“26. In view thereof, in my opinion, the following order will meet the ends of justice:

- (i) The impugned order dated 09.01.2012 passed by the learned District Judge is quashed and set aside and the Miscellaneous Civil Appeal No.101 of 2011 is restored to the file of the District Court;
- (ii) The plaintiffs and defendants as also purchaser shall appear before the learned District Judge on 07.02.2013;
- (iii) The plaintiffs will take out application for

impleading purchaser as respondent in the Appeal and since the purchaser has already taken out application in the trial Court for impleading him as party defendant, the learned District Judge will grant a permission to implead him as respondent in the Appeal. The said exercise shall be done as soon as possible and in any case within one week from the date of appearance of the parties;

- (iv) The purchaser will be at liberty to file his reply in the appeal and produce the documents on which he proposes to rely;
- (v) The learned District Judge will find out whether the plaintiffs are/were in possession of the suit property as on date of the institution of the suit as also will find out whether the defendants could have sold 83 Ares out of Survey No.228/2 on the basis that it has been sub-divided into Survey No.228/2/1;
- (vi) All contentions of the parties as regards admissibility of the documents are expressly kept open;
- (vii) The learned District Judge shall decide the Appeal as expeditiously as possible, and in any case, within three months from today. In the meantime, the parties shall maintain status-quo as of today."

Clause (v) required the learned District Judge to find out whether the plaintiffs are/were in possession of the suit property as on date of the institution of the suit and also to find out whether the defendants could have sold 83 Ares out of Survey No.228/2 on the basis that it has been subdivided into Survey No.228/2/1. After the remand, the learned District Judge, as indicated earlier,

has partly allowed application Exh.5. Mr. Bandiwadkar submitted that the plaintiffs have claimed reliefs in respect of 4 H., 65.5 Ares out of Survey no.228/2. Respondent no.3/defendant no.3 is concerned with 83 Ares from S.No.228/2 only. It is, therefore, necessary for the learned District Judge to record findings as to whether the plaintiffs are in possession of 4H, 65.5 Ares or not, and whether the respondent no.3/defendant no.3 is in possession of 83 Ares of Survey No.228/2 or not.

5. Mr. Bandiwadkar submits that by consent, the impugned order may be set aside by directing the learned District Judge to record a categorical finding on the above aspects. Hence, by consent of the parties, the impugned order is set aside and Misc. Civil Appeal No.101 of 2011 is restored to the file of the learned District Judge. The learned District Judge will record findings as to whether the plaintiffs are in possession of 4 H. 65.5 Ares and also will record finding whether the defendant no.3 is in possession of 83 Ares out of Survey no.228/2.

6. As far as injunction issued by the learned District Judge restraining the defendants from creating third party interest in the suit land till final disposal of the suit is concerned, the same is upheld. Parties are directed to maintain status-quo as of today.

(R.G.KETKAR,J.)