

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11472 OF 2016

Vilas Ananda Tambvekar
And Ors.

...Petitioners

Versus

Kuber Anant Magdum

...Respondent

....

Mr.Ranjeet Patil, Advocate for the Petitioners.

Mr.Nitin B. Patil, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 16th DECEMBER, 2016

P.C.

1. Heard Mr. Ranjeet Patil, learned Counsel for the petitioners and Mr. Nitin B. Patil, learned Counsel for the respondent, at length.

2. Rule. Mr. Nitin Patil waives service. Having regard to the narrow controversy raised in the petition as also in view of order dated 9.12.2016, Rule is made returnable forthwith and

the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'plaintiffs', have challenged the judgment and order dated 30.8.2016 passed by the learned District Judge-II, Islampur in Misc. Civil Appeal No.30/2015. By that order, the learned District Judge allowed the appeal preferred by the respondent, hereinafter referred to as the 'defendant', and quashed and set aside the judgment and order dated 22.4.2015 passed by the learned trial Judge below Exhibit-6 in R.C.S. No.289/2014. The learned trial Judge had issued injunction restraining the defendant from causing obstruction to the plaintiffs possession over Gat No.126/1, admeasuring 66 Ares situate at village Mardawadi, Taluka and District Sangli, more particularly described in paragraph-1 of the plaint.

4. In support of this Petition, Mr. Ranjit Patil has taken me through (I) description of the suit property given in paragraph-1 of the plaint and (II) agreement of sale executed by Sudhir R. Tambvekar in favour of the defendant on 20.10.2000 and in particular the description of the property therein. Sudhir

R. Tambvekar agreed to sell Revision Survey No.126/2B/2 admeasuring 55 Ares. The boundaries are also described in that agreement for sale. Mr. Ranjit Patil invited my attention to the order passed by the learned trial Judge and the impugned order. In particular in paragraph-13 of the impugned order, the learned District Judge has referred to the agreement of sale executed by Sudhir R. Tambvekar in favour of the defendant whereunder he agreed to sale Survey No.126/2B/2 admeasuring 55 Ares. The learned District Judge thereafter observed that there is no dispute about ownership of the property. The dispute is only of the boundaries and possession and that can be seen at the time of final hearing of the suit as to whether the boundaries are wrongly mentioned in the sale deed. In my opinion, the learned District Judge has misdirected himself while allowing the appeal. If the dispute is in respect of boundaries and possession, in such state of affairs, without resolving this dispute the learned District Judge could not have issued injunction. In this regard, it is necessary to bear in mind the provisions of Order XXXIX Rules 1 & 2 of C.P.C. While issuing injunction the Court has to ensure that the properties specifically identifiable by boundaries and in such

event only can issue injunction. As the learned District Judge has failed to consider this aspect, the impugned order cannot be sustained and as such is liable to be set aside thereby restoring the appeal to the District Court for deciding it afresh. In the meantime, it is also necessary to revive the trial Court's order as and by way of ad-interim order. Hence, the following order :

- i. Impugned order dated 30.8.2016 passed by the learned District Judge is set aside. Misc. Civil Appeal No.30/2015 is restored to the file of the learned District Judge.
- ii. Pending the appeal, the order of the trial Court dated 22.4.2015 shall operate as ad-interim order. Grant of this ad-interim order shall not be construed as an expression of merits either way. The learned District Judge will decide the appeal on its own merits in accordance with law uninfluenced by the observations made herein.
- iii. All contentions of the parties on merits are expressly kept open.
- iv. The learned Counsel appearing for the parties assure

that they will appear before the District Court on 4.1.2017 and for that purpose no fresh notice be issued to them.

- v. The learned District Judge is requested to decide the appeal as expeditiously as possible and in any case within four weeks from the date of appearance of the parties.
- vi. Rule is made absolute in aforesaid terms with no order as to costs.
- vii. All parties, including the District Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)