

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.418 OF 2016

Shaila Arun Zute	...	Petitioner
Vs.		
Pandurang Maruti Kafre and others	...	Respondents

Mr. Samir A. Vaidya for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 14, 2016

P.C. :

Heard Mr. Vaidya, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, plaintiff in Regular Civil Suit No.220 of 2014 has challenged the order dated 24.08.2015 passed by the learned District Judge-1, Khed-Rajgurunagar below exhibit – 5 in Civil Appeal No.24 of 2015.

3. Respondent No.10 herein, Baban had instituted R.C.S.No.106 of 1993 for perpetual injunction against defendant No.1 Maruti and Defendants No.2 and 3, Pandurang and Waman respectively, sons of Maruti. The property involved in that Suit was Gat No.729 admeasuring 72 Ares. That Suit was decreed on 02.08.1997. In that Suit, plaintiff Baban asserted that defendants had made encroachment in Gat No.729 from Southern side and cut the trees at Bandh. The learned trial Judge noted in paragraph 6 that Suit is for injunction simplicitor and not for possession of the encroached portion. The learned trial Judge accordingly decreed the Suit and issued perpetual injunction on 02.08.1997. Baban thereafter instituted Regular Civil Suit No.7 of 1997 for possession of encroached area to the extent of 1 H 15 Ares against defendant No.1 Maruti and defendants No.2 to 6 who are the sons of

Maruti. That Suit was decreed on 28.08.2007 and defendants therein were directed to handover vacant and peaceful possession of 1 H 15 Ares Southern side area in block No.729 to plaintiff Baban.

4. Petitioner herein has instituted Regular Civil Suit No.220 of 2014 against defendant No.1 Pandurang Maruti Kafre, defendant No.2 Waman Maruti Kafre, defendant No.3 Jayant Maruti Kafre, defendant No.4 Bharat Maruti Kafre, defendant No.5 Rupali R. Dudhale, defendant No.6 Sonali N. Kandharkar, defendant No.7 Pratiksha Suresh Kafre, defendant No.8 Sharmishtha Suresh Kafre, defendant No.9 Pranav Suresh Kafre and defendant No.10 Baban Sakharam Gawade for partition and separate possession of her 1/5th share in Gat No.728 admeasuring 10 acres 33 gunthas. Pending the Suit, she took out application at exhibit-5 for stay of Regular Darkhast No.2 of 2014, which was filed for execution of decree passed in Regular Civil Suit No.7 of 1997. By order dated 20.02.2015, the learned trial Judge rejected the application on the ground that subject matter of Regular Darkhast No.2 of 2014 is Gat No.729 and the subject matter of the Suit is Gat No.728. Thus, Regular Darkhast No.2 of 2014 is not at all concerned with Gat No.728.

5. Petitioner also filed application exhibit-36 in Regular Darkhast No.2 of 2014 for staying proceedings of Regular Darkhast No.2 of 2014. By order dated 20.02.2015, the learned trial Judge rejected the application. The learned trial Judge observed that the subject matter of Suits in R.C.S.No.106 of 1993 and R.C.S.No.7 of 1997 was Gat No.729. In the former Suit, perpetual injunction was issued and in the latter Suit, decree of possession of encroached portion was passed. The learned trial Judge held that principle of res judicata will not apply here. Aggrieved by orders dated 20.02.2015 passed below exhibit 5 in

Regular Civil Suit No.220 of 2014 and below exhibit-36 in Regular Darkhast No.2 of 2014, petitioner instituted Writ Petition No.3828 of 2015 in this Court. By order dated 16.04.2015, this Court, without going into the merits of the matter, permitted the petitioner to file appeal. Accordingly, petitioner has preferred appeal challenging the orders dated 20.02.2015. Pending that appeal, she took out application exhibit-5. By the impugned order, the learned trial Judge has rejected the application.

6. As noted earlier, Suit of 1993 and Suit of 1997 were in respect of Gat No.729. Petitioner has instituted Suit for partition in respect of Gat No.728, which is altogether a different property. In view thereof, prima facie, petitioner has no locus to apply for stay of Regular Darkhast No.2 of 2014 as also seek injunction in respect of Gat No.729. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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