

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABA

WRIT PETITION NO. 11835 of 2016

Sardarsing S/o Rupchand Pardeshi,
age 71 years occupation agriculture
R/o at Pimpalgaon (Bk) Post Bhabrul
Taluka Bhadgaon Dist. Jalgaon.

...PETITIONER

VERSUS

1. Chindhabai W/o Suklal Pardeshi,
age 60 years occupation agriculture
R/o at Pimpalgaon (Bk.) Post Bhabrul
Taluka Bhadgaon Dist. Jalgaon.
2. Bhavlal S/o Suklal Pardeshi,
age 45 years occupation and R/o as above.
3. Sanjay S/o Suklal Pardeshi,
age 43 years occup. & R/o as above.

...RESPONDENTS

Mr Vijay B. Patil, Advocate for petitioner.
Mr Shailesh P. Bramhe, Advocate, for all respondents

CORAM : NITIN W. SAMBRE, J.

DATE :9th October, 2017

ORAL ORDER :

In Regular Civil Suit No. 78 of 2015 filed in the Court of Civil Judge (Junior Division), Bhadgaon, petitioner/plaintiff moved an application Exh. 5 under Order XXXIX Rules 1 and 2 of the Civil

Procedure Code, seeking injunction against respondents/defendants, which came to be allowed, vide Order dated 18th March 2016, whereby the respondents/defendants were temporarily restrained from digging a pit in the suit property and causing obstruction to the ownership of the plaintiff and their possession.

2. The Appellate Court being District Judge-4, Jalgaon, in Misc. Civil Appeal No 20 of 2016, in exercise of powers under Order 43 Rule 1(r) of the Civil Procedure Code, vacated the injunction. As such, this petition.

3. While questioning order of the Appellate Court, Shri Patil, learned Counsel for the petitioner/plaintiff, would urge that the Trial Court having considered the rough sketch map, other material, viz. the documents placed before it, has appreciated it to grant injunction in favour of the present petitioner/plaintiff. He would urge that once the property is destroyed by digging well, as is claimed in the suit, the plaintiff shall suffer irreparable loss.

4. In addition, he would urge that admittedly, there appears to be a dispute between the parties qua measurement and boundaries, which issue is taken up by respondents/defendants before the Revenue Authority, where the outcome is awaited. In view thereof, according to him, the lower Appellate Court ought not to have interfered in the findings.

5. Per contra, Shri Bramhe, learned Counsel for the respondents/defendants, supported order of the lower Appellate Court. He would invite attention of this Court to the boudnaries, as are marked in the sale deed executed in 1932 by one Kalibai in favour of father-in-law of defendant No.1. According to him, if compared with that of boundaries in sale deed dated 15th June 1981 of the plaintiff, it is well established that there is road on East side of the land of the respondents/defendants. According to him, in view thereof, the Appellate Court rightly appreciated material on record and vacated injunction.

6. Considered rival submissions. It is not in dispute that the present petitioner has produced copy of the sale deed before lower Appellate Court, so also by the defendants/respondents. Said documents are compared and dealt with by the lower Appellate Court as reflected from the considerations in paragraph 26 of the order. The Court was alive to the fact that on 14th May 1932, land survey No. 546/3 belonging to Kalibai was sold in favour of Ramchandra, father-in-law of present respondent/defendant No.1. The Appellate Court proceeded to consider boundaries of the said property and noticed that on the East side, in the said document, there is specific mention of Pimpalgaon *Shiv*. The Appellate Court then proceeded to consider sale deed dated June 15, 1981 executed by one Rajkorbai in favour of Rupchand, father of

present plaintiff, wherein land Gat No. 889 /original survey No. 546/3 and 546/2 with common boundary therein was considered.

7. In the wake of above, from the sale deed executed in favour of respondents/defendants, the location of the property, as mentioned by the plaintiff in his suit claim, appears to be with incorrect boundary marks. The said issue prominently prevailed over the Appellate Court for vacating injunction.

8. So as to moving application dated December 24, 2015 before the Deputy Director of Land Records, Pune, is concerned in regard to the correction of Eastern boundary, the fact remains that the findings in a civil suit will prevail over the findings of the Revenue Authority and, as such, if any corrective order is passed either way, it is the finding in the suit which will govern the rights in property in question.

9. In view of above, having noticed that the order of the Appellate Court is based on appreciation of the documentary evidence, based on background of the pleadings of respective parties, it hardly calls for any interference. The petition, as such, lacks merit and stands dismissed.

(NITIN W. SAMBRE, J.)

pjm