

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12870 OF 2016

Laxman S/o Bhau Pujari & others

Petitioners

Versus

Savkar S/o Bhau Borude & another

Respondents

Mr. K.N. Shermale advocate for the petitioners

Mr. V.D.Salunke advocate for Respondents

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 10th July, 2017.)

PER COURT :-

1 The petitioners are aggrieved by the order dated 17.12.2016 passed by the learned Trial Court, by which Miscellaneous Civil Appeal No.128/2016 has been allowed with certain directions which read as under:-

" ORDER

1. The Misc. Civil Appeal No.128/2016 is hereby partly allowed.

2. The Judgment and order dated 07.04.2016 below Exh.5 in Regular Civil Suit No.143/2016 passed by the learned Civil Judge Junior Division, Parner is hereby quashed ad set aside. The matter is remanded to the Trial Court for hearing afresh on temporary injunction application (Exh.5).

3. The defendants are at liberty to file say in the proceedings to application (Exh.5), if they desire.

4. It is expected that, the Trial Court to decide the application (Exh.5) as early as possible.

5. Report the Trial Court.”

2 I have heard the learned Advocates for the respective sides at length.

3 There is no dispute that, in all there are three separate Suits pending between the parties bearing Nos. RCS 301/11, RCS 106/2012 (Old No.18/11) and RCS 143/2016. It is also not in dispute that in RCS No.301/2011, the Trial Court has passed an order on 23.11.2016 below Exhibit 5, preventing the petitioners in this petition from interfering with the possession of the plaintiffs in that suit. The order dated 23.11.2011 reads as under:-

“ ORDER

1 The application Exh.5 is allowed.

2 The defendants are hereby restrained from interfering the plaintiffs possession over the sit property and from alienating the suit property in any way till final disposal of the suit.

5 No order as to costs.

Pronounced in open Court. ”

4 It is also not in dispute that, the order dated 23.11.2011 has not been interfered with by any superior Court and the said order continues to bind the litigating sides before this Court.

5 In RCS No.143/2016 filed by the present petitioners, the trial Court has passed an order on 7.4.2016, which is *exparte* as the defendants, who are respondents herein, did not appear before the Court. By the said order, the said defendants are restrained from constructing and obstructing the petitioner plaintiffs by way of a temporary injunction. It is this order, that was carried in Appeal by the said defendants and the appeal Court passed the impugned order on 17.12.2016 which is reproduced above.

6 Shri V.D. Salunke, learned advocate for respondents has placed on record 16 colour photographs in the form of photostat colour copies, indicating that after the petitioner approached this Court in this petition, for challenging the order dated 17.12.2016 and after this Court directed *status-quo* to be maintained by order dated 29.12.2016 passed in vacation, these petitioners have attempted to demolish the iron bars, mesh fencing on the borders of the respondent land. The photographs indicate bent poles, scattered mesh fencing, felling of certain trees. The said 16

photographs which are on a single sheet, are taken on record and marked 'X' for identification.

7 It is apparent that the respondents herein i.e. defendants Nos.1 and 2 did not participate in the proceedings before the Trial Court, in so far as Exhibit 5 in RCS No.143/2016 is concerned. It is only on this ground that the appeal Court, by the impugned order, has directed the said defendants to file their Say and the trial Court is directed to decide Application exhibit 5, afresh as early as possible. An interlocutory order is, therefore before this Court coupled with the fact that the defendant Nos.1, 2 and 3 were not heard when the order dated 7.4.2016 was passed.

8 I, therefore, deem it appropriate to dispose of this petition by directing the parties to maintain *status-quo*, as existing today which is visible from the photographs at Exhibit 'X'. The application Exhibit 5, as directed by the Appeal Court can be decided within a time frame.

9 As such, the petition is disposed of by directing the litigating sides to maintain *status-quo* which would mean and include the order dated 23.11.2011 passed in RCS No.301/2011 and in view of the position evidenced by the photographs 'X'. It goes without saying that, both the sides would not interfere with their

respective peaceful possession. The defendant Nos.1 and 2 shall file their Say to exhibit 5 in RCS No.143/2016 as expeditiously as possible and in any case on or before 25.7.2017. Thereafter, the Trial Court shall proceed to hear all the litigating sides on application exhibit 5 and decide the same as expeditiously as possible and in any case on or before 31.8.2017. Needless to say, exhibit 5 shall be decided on its own merits considering the submissions of the parties.

(RAVINDRA V. GHUGE , J)