

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2712 OF 2016

Nagesh Veerpakshapaa Wale	 Petitioner
V/s.	
Shivammabai Shivshankar Wale	 Respondent

Mr. Priyal G. Sarda for the Petitioner.

None for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 12TH DECEMBER 2017.

P.C. :

1. Heard Mr. Sarda, learned counsel for the Petitioner.
2. This Writ Petition is preferred under Articles 226 and 227 of the Constitution of India, challenging the order dated 16th October 2015 passed by the District Judge-3, Solapur, thereby dismissing Civil Miscellaneous Appeal No.157 of 2014 filed by the Petitioner herein challenging the order dated 3rd July 2014 passed by the Civil Judge, Junior Division, Akkalkot, below "Exhibit-5" in Regular Civil Suit No.07 of 2014, thereby rejecting the Petitioner's application for interim injunction. The said application for interim injunction was filed by the

Petitioner for restraining the Respondent from demolishing the eastern side wall of the suit property and thereby changing the nature of the suit property.

3. As per the case of the Petitioner, eastern portion out of C.T.S. No.2569/1 and a room described in paragraph No.1 of the plaint is the ancestral property of the Petitioner and in the partition effected in the year 1962, it was allotted to the share of the Petitioner's father. He has partitioned the same as per the registered Partition Deed dated 8th April 1981 amongst himself and his five sons and the suit property has come to the share of the Petitioner as per the registered Partition Deed. Thus, according to the Petitioner, he has become the owner and occupant of the suit property since 8th April 1981. Respondent is the paternal aunt of the Petitioner and she was given a separate share in the partition. She is enjoying the property allotted to her share and has, therefore, no concern with the share of the Petitioner. However, she tried to demolish the eastern side wall of the suit property. The Petitioner was, therefore, constrained to file Regular Civil Suit No.26 of 1993, along with the application for interim injunction.

4. The said application came to be resisted by the Respondent and the Trial Court, after hearing learned counsel for both the parties, was pleased to reject the said application; mainly on the ground that the Suit

for partition was filed by Respondent's husband and Second Appeal No.260 of 1989 is pending in the High Court. In view thereof, it was held that the partition has not achieved its finality for the Petitioner to claim separate ownership over the alleged share allotted to him by his father. It was also held that, the present Petitioner has previously filed Regular Civil Suit No.26 of 1993 for possession of the suit property, along with the mesne profit, which came to be dismissed, under Order 9 Rule 3 of C.P.C., on 9th October 1996. It was held that, none of these material facts were disclosed by the Petitioner in his application or in the Suit filed before the Trial Court. In view of these specific findings arrived at by the Trial Court, the Trial Court was pleased to dismiss the Petitioner's application for interim injunction and the said order was confirmed by the Appellate Court.

5. Needless to state, that the findings, which are arrived at by the Trial Court and the Appellate Court, are based on the documentary evidence, which was produced before the Trial Court, and on the admitted fact that Second Appeal No.260 of 1989 was pending in the High Court relating to partition of the suit property and also the fact that the previous Suit filed by the Petitioner for possession of the suit property was dismissed under Order 9 Rule 3 of C.P.C.

6. In view thereof, the Petitioner has neither the prima facie case nor

the balance of convenience in any way to get the relief of interim injunction. The Trial Court as well as the First Appellate Court have, therefore, rightly rejected his application. The discretion exercised by the Trial Court as well as the Appellate Court, being just, legal and correct, no interference is warranted therein. The Writ Petition, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]