

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2816 OF 2016

Sandip Hiralal Kharat ..Petitioner.

Vs

Yuvraj Sambhaji Kharat .. Respondent

Mr. Dhananjayrao D. Rananaware, Advocate for Petitioner.
Mr.Kirankumar Phakade, Advocate for Respondent.

**CORAM : R.G.KETKAR,J.
DATE : 25/01/2017**

PC:

1. Heard Mr. Dhananjayrao Rananaware, learned counsel for the petitioner and Mr.Kirankumar Phakade, learned counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant', has challenged the Judgment and order dated 13.1.2016 passed by the learned District Judge-4, Satara in Misc.Civil Appeal No.179 of 2015. By that order, the learned District Judge partly allowed the Misc.Civil Appeal preferred by the respondent, hereinafter referred to as 'plaintiff', and directed both the parties to maintain the nature of the suit property as on date and shall not make any sort of temporary or permanent construction on the suit property till final disposal of the suit. The defendant is also directed to provide access way to the plaintiff through the suit property, if necessary by removing some portion of the tin-shed.

3. The plaintiff has instituted suit against the defendant, inter alia, praying for mandatory order directing the defendant to remove Patra-shed erected in the property described in paragraph 1B of the plaint; for perpetual injunction restraining the defendant from carrying out construction of any nature. Pending the suit, the plaintiff took out application Exhibit-5 for temperate injunction restraining the defendant from carrying out any construction in respect of the suit property. The defendant filed written statement and say to the application opposing the suit as also the application for temporary injunction. The learned trial Judge rejected the application on 3.9.2015. Aggrieved by that order, the plaintiff preferred the Misc.Civil Appeal which was partly allowed, as indicated earlier. It is against this order, the defendant has instituted the present petition.

4. In support of this petition, Mr.Rananaware strenuously contended that the plaintiff has not established his title over the suit property. The plaintiff has also not established his possession over the suit property. He has invited my attention to paragraphs 11 and 12 of the trial Court's Judgment. In paragraph 11, the learned trial Judge referred to the extracts produced at Exhibit-3/1 in respect of Gram Panchayat property No. 299 for the period 1987-98, which indicated plaintiff's house facing north and open space admeasuring 6 Khan is facing backside. This exhibit records the names of the plaintiff and Ganpat Pandurang

Kharat. The learned trial Judge also referred to Village Form No. 8 produced at Exhibit-3/2 in respect of Gram Panchayat property no.432 which is also facing north, admeasuring East-West 19' and North-South 26' which also stands in the name of the plaintiff and Ganpat Pandurang Kharat. As per the plaintiff's contention, the property described in paragraph 1A was facing north till 1965 and thereafter it is facing south as also east.

5. In paragraph 12, the learned trial Judge observed that in the documents produced at Exhibits 3/1 and 3/2, Village Form No.8 produced for the period from 1965 do not indicate that the property is facing either South or East. Equally, the plaintiff did not produce any material on record to indicate that Gram Panchayat House no.432 was previously Gram Panchayat House No.299.

6. Mr.Rananaware further submitted that while partly allowing the appeal, the learned District Judge also granted prayer which was also not even made by the plaintiff. The learned District Judge directed the defendant to provide access way to the plaintiff through the suit property, if necessary, by removing some portion of the tin-shed. He submitted that said direction ought to be set aside as the learned District Judge granted prayer which was not made by the plaintiff. For all these reasons, he submitted that the impugned order deserves to be set aside.

7. On the other hand, Mr. Phakade supported the impugned

order. He has taken me through the impugned order and in particular paragraphs 9 to 13. He also submitted that notwithstanding the order of the learned District Judge, the defendant has carried out construction and the plaintiff has made complaint on 31.12.2016 to Koregaon Police Station. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

8. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of paragraph 9 of the impugned order shows that the learned District Judge has referred to Village Form 8-A extract for the period 1987-1988 to 1997-98 in respect of house no. 299. In these extracts, open space in the backyard is shown. Extracts of Village Form 8-A for the years 2010-2011 to 2013-2014 shows that for the house property no.432, the entry about open space is not there. The learned District Judge referred to the area of house no. 432 is 494 sq.meters and the area of house no.299 is 600 sq.meters. The learned District Judge observed that the defendant did not specifically deny that the two properties are one and the same, as contended by the plaintiff. The learned District Judge, therefore, prima facie held that the plaintiff proved that the property comprising house no. 432 and 299 are one and the same. Thus, the plaintiff prima facie established that till the year 1998 there was entry of the open

space on the southern side of the plaintiff's house.

9. In paragraph 10 the learned District Judge referred to reason that weighed to the trial Court while rejecting the application. The learned District Judge observed that prima facie the plaintiff has established that there was entry of his name till the year 1998 and it is for the defendant to establish his ownership over the suit property. In paragraph 11, the learned District Judge observed that the defendant has not produced any material for establishing his ownership after 1998. In paragraph 12, the learned District Judge referred to photographs placed on record by the plaintiff which show that door opens to the suit property, i.e the open space and the fact of demolition of bathroom is also apparent. The learned district Judge therefore noted that if at all the suit property was owned by the defendant, he would not have allowed the plaintiff to construct bathroom in his land. As the tin-shed was already erected and the bathroom was also demolished, the learned District Judge observed in paragraph 13 that damage to the plaintiff's property was already caused and at the time of filing of the suit the defendant was occupying the possession of the suit property. The learned District Judge, therefore, did not issue injunction as prayed by the plaintiff but at the same time directed both the parties not to carry out any construction either of temporary or permanent nature in the suit property till disposal of the suit and

further having regard to development that took place pending the suit, directed the defendant to provide access to the plaintiff from the suit property, if necessary by removing some portion of the tinshed. As the development took place pending the suit, I do not find that the learned District Judge committed any error in passing the impugned order by directing the defendant to provide access to the plaintiff from the suit property, if necessary by removing some portion of the tin-shed. Hence, Petition fails and the same is dismissed. The learned District Judge gave liberty to the parties to request the learned trial Judge to dispose of the suit expeditiously. On such application the learned trial Judge was requested to dispose of the suit within one year. In view thereof, parties are at liberty to make application before the trial Court for disposal of the suit in a time bound manner. In the light of paragraph 4 of the District Court's order, the learned trial Judge will pass appropriate order on that application. Order accordingly.

(R.G.KETKAR, J.)