

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

WRIT PETITION NO.3105 OF 2014

Shivaji Ramchandra Patil

...Petitioner

vs.

Bhimrao Nivrutti Patil & Ors.

...Respondents

Mr. Shriram S. Kulkarni for the Petitioner.

Mr. Girish R. Agrawal for Respondent Nos. 1 to 7.

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 4th October, 2017**

P.C.:

. Heard. Rule. Rule is made returnable forthwith, by the consent of the parties.

2. The Petitioner herein happens to be the original Plaintiff in Regular Civil Suit No.510/2012 pending before the learned 5th Joint Civil Judge, Junior Division, Karad. The suit was filed for perpetual injunction. The Plaintiff had also filed an application below Exh.5 under Order 39 Rule 3 of CPC. The learned Judge while considering the application for injunction had considered the status of the parties along with portion of the disputed land in their respective possession. After considering the rival contentions of the parties it was held by the learned Trial Court that the Plaintiff is in possession of .5 R. Ofcourse this was the prima facie observation. By order dated 3/8/2012, the learned Trial Court issued notices to the Defendants and directed the parties to the suit to maintain status-quo. On the same date, order of status-quo was extended for a period of 15 days to enable the Plaintiff to prefer an Appeal.

3. Being aggrieved by the same, the Plaintiff i.e. the present Petitioner had filed Misc. Civil Appeal No.66/2012 before the District Judge-1, Karad. The Appellate Court in order to satisfy itself on the basis of contentions raised by the rival parties had appointed court commissioner to find out the actual position of the land and the portion which was in possession of the respective parties. In para 11 of the said order the Appellate Court has observed that according to the Trial Court only .5 R land is in possession of the Plaintiff. This was observed in view of the contention of the Plaintiff that there was a mutual exchange between the Plaintiff and the Defendants in respect of the properties and they were bound by the same, the issue of exchange was left open to be decided in the Trial Court by adducing substantive evidence. The Appeal was dismissed by the District Judge vide order dated 5/2/2014.

4. It is pertinent to note that since it involves disputed question of facts and law which can be proved only by adducing substantive evidence by the respective parties after framing of the issues, it would not be necessary to place implicit reliance upon the Court Commissioner's report as the finding of the Court Commissioner is only for assisting the Court at the stage of deciding the application below Exh.5. Hence, as the Appellate Court has considered that the issue would be left open, it would be in the interest of justice to leave the issue open to be decided at the appropriate stage.

5. Suffice it to say that the parties shall maintain status-quo till the conclusion of the suit. The learned Trial Court seized with Regular Civil Suit No.510/2012 is hereby requested to make an endeavour to conclude the suit as far as possible by December 2018.

6. Petition stands disposed of. The parties are at liberty to move the Court for expeditious hearing and the same be considered by the Court.

The parties shall maintain the order of status-quo and shall not commit breach of the order.

(SMT. SADHANA S. JADHAV, J.)