

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

**APPEAL FROM ORDER NO.606 OF 2014
with
CIVIL APPLICATION NO.731 OF 2014**

Vasant Krishna Gawali ... Appellant
Vs.
Union of India & Ors. ... Respondents

Mr.Rahul Nerlekar for the Appellant
Mr.T.J. Pandian for Respondent Nos.1, 2 and 3
Mr.Prashant Kamble i/b A.S. Rao for Resp. No.5

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: SEPTEMBER 22, 2017**

P.C. :

1. Admit. As the matter is old, by consent of the parties, the appeal is heard finally.

2. In this Appeal from Order, the order dated 24.2.2014 passed by the learned Civil Judge Senior Division, Kalyan, below exhibit 5 in Regular Civil Suit No.15 of 2010 is challenged. The appellant/plaintiff had filed a suit for declaration that any resolutions, agreements, tenders, transfers, which have taken place with respect to the suit land between the defendant and the other persons are illegal, bad in law. It was also filed for mandatory injunction that the respondent / Union of India i.e.,

Railways, shall demolish the construction of the road, nalla, ticket house. An injunction was also prayed that no officer or agent of the respondent/railway shall obstruct the possession of the plaintiff and also shall not disturb his parking space by Vinayak parking and the respondent/railways shall not create any right, title, lease or transfer in the said parking plot. The plaintiff claimed possession of the land of nearly 17 acres of land in the city of Kalyan from various survey numbers. He claimed that he is cultivating the land and he is in possession of the said land from generations.

3. The learned Counsel for the appellant has submitted that the possession of the plaintiff on the land is not disputed by the railways. The learned Judge has erred in appreciating the documents produced by the plaintiff. He further submitted that the admissions given by the respondent/railways in the written statement about the possession of the plaintiff are not appreciated in proper perspective by the learned Judge. He produced and relied on the agreement dated 20.2.1969 by which he obtained possession of the property. He submitted that the document was in fact produced before the trial Court but the trial Court erred in stating that the agreement was not placed before it. The learned

Counsel submitted that whatever construction is made by the railways, the plaintiff does not seek any order by way of interim relief, however, the possession of the plaintiff in respect of the remaining land is to be protected and his possession is not to be disturbed.

4. The learned Counsel for the respondent/railways while opposing the Appeal from Order, relied on the written statement filed by it. He has submitted that the land was in fact acquired by the government under award dated 31.3.1981. The plaintiff is not in possession of the land and the railway has constructed a shed road and is in possession of the suit land.

5. Perused the impugned order, plaint, written statement, notice of motion so also the documents especially the agreement dated 20.2.1969. It appears from the order of the learned Judge, City Civil Court, that the plaintiff has filed other suits i.e., Suit Nos.178 of 2002, 350 of 2002 before the learned Civil Judge, Junior Division and the learned Civil Judge Senior Division, Kalyan about the property in dispute wherein he is seeking injunction and declaration in respect of the same property, but it was dismissed for default on 29.10.2002. The submissions of the learned

Counsel for the plaintiff that the respondent/defendant had admitted the fact of possession and, therefore, that should have been accepted by the Court, are misleading.

6. In support of his submissions, he drew my attention to paragraphs 6 and 7 of the written statement of the defendants. In the opening lines of the said paragraph, the defendants have mentioned that the contents of para 2 and 3 in the plaint are admitted. However, in the entire body of the said paragraph, the defendant/respondent has disputed all the averments made by the plaintiff on the point of possession of the suit land. On a perusal of paragraphs 6 and 7, it appears that some portion in paras 2 and 3 of the plaint in respect of acquisition of land in respect of notice before filing of the suit given by the plaintiff are admitted and therefore, the opening statement in paras 6 and 7 cannot be read in isolation and cannot be treated as admission in respect of possession of the suit land by the plaintiff. In paragraph 6, the defendants have elaborately mentioned that the Special Land Acquisition Officer has acquired the suit land on 20.9.2009, however, it appears that forefather of the present plaintiff one Santu Gawli had taken objection before the Special Land

Acquisition Officer on the ground of lease. However, it was turned down by the Special Land Acquisition Officer and the matter was taken before the High Court but the order of the S.L.A.O. was confirmed. The photocopy of the document dated 20.2.1969 which is relied by the plaintiff is not produced before the Court. It is an unregistered document in respect of the immovable property. No transfer of possession can be considered as legal on the basis of an unregistered document. Moreover, the predecessor in title of the land is compensated by the government. Considering the nature of the suit and the reliefs claimed by the plaintiff, the trial Judge has rightly held that *prima facie* case is not proved to grant injunction.

7. In the circumstances, the order of the trial Judge is upheld. Appeal from Order is dismissed.

8. Civil Application No.731 of 2014 also stands dismissed.

(MRIDULA BHATKAR, J.)