

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8564 OF 2017

Ramhari M.Mane & Another	..	Petitioners.
v/s.		
Audumbar V.Mane	..	Respondent.

Mr. Ajay Joshi, for the Petitioners.
Mr. V. S. Talkute, for Respondent No.1.

CORAM: M.S.SANKLECHA, J.
DATE : 6th SEPTEMBER, 2017.

P.C:-

Moved for urgent vacating of the ad-interim relief in favour of Petitioner and dismissal of the Petition.

This application has been moved by the learned Counsel for the Respondents/ Original Plaintiffs, seeking a variation/ vacation of the ad-interim relief staying the impugned order dated 29th June, 2017 by orders dated 27th July, 2017, 3rd August, 2017 and 31st August, 2017 till 6th September, 2017.

2 Mr. Talkute, learned Counsel appearing for Respondent No.1/ Original Plaintiff states that this Court has not yet considered even the *prima facie* merits of the Petition for admission and ad-interim relief has been granted to the Petitioner without having heard the Respondent. This by extending the stay granted by the impugned order dated 29th June, 2017 by the Court which passed the impugned order. It is submitted that grave harm and prejudice is being caused in view of the ad-interim relief extended by this Court, running in favour of the Petitioner, as the

same was granted without Respondent being heard on the merits of the admission and ad-interim relief as it was expected that Petition itself would be heard for admission on 11th August, 2017. However, on that date, the board was curtailed. This ad-interim injunction, it is submitted restrains him from accessing his land during the agricultural season. Thus, the same causes prejudice and gives rise to need for urgent reliefs.

3 The Respondent submits that its interim application for injunction, restraining the Petitioner herein from interfering with his access to Gat No.259/4 from the 10 ft. wide road existing to the north of Gat No.259/4 and also to the north of Gat Nos.259/2 and 259/3 was allowed both by the Trial Court and the Appellate Court. This on a *prima facie* conclusion that there is an existing road to the north of Gat No.259/2 259/3 and 259/4 which would be available to the Respondent/Plaintiff for accessing his land i.e. Gat No.259/4. In view of the ad-interim relief granted by this Court, grave prejudice is being caused to the Respondent as he is unable to excess his land at 259/4, using the suit road situated to the north of Gat Nos.259/4, 259/3 and 259/2 and, therefore, should be vacated. This more particularly so, as the Gat No. 259/4 is landlocked by Gat Nos. 259/3 and 259/5, both of which are owned by the Petitioner and/or his family. He submits that this is an agricultural season. Therefore, the access to Gat No.259/4 for the purpose of agricultural operation during monsoon season, is most imperative.

4 As against the above, Mr. Joshi learned Counsel appearing for the Petitioner submits that the impugned order passed by the Trial Court as well as the Appellate Court are perverse inasmuch as it is contrary to the Court Commissioner's report. In the above view, it is submitted that

in accordance with the Court Commissioner's report, Petitioner be allowed to access Gat No.259/4 from a pathway existing to the north of Gat Nos.259/2, 259/3 and 259/4.

5 I find that both the Trial and the Appellate Court orders after having the benefit of the Court Commissioner's report and further evidence which were available on record, had both come to *prima facie* conclusion, that there was in existence of 10 ft, wide road situated to the north Gat Nos.259/2, 259/3 and 259/4, providing access to the Respondents land viz: Gat No.259/4. The Court Commissioner's report though worthy of much respect is not conclusive. It is to be considered along with further evidence on record as done by the impugned orders of the Trial and the Appellate Court in the present facts.

6 I find that the impugned order dated 29th June, 2017 which upholds the order of the Trial Court dated 5th May, 2017 have both taken a reasonable view on the basis of the evidence available before them at the interim stage. Though Mr. Joshi made an attempt to show that the impugned orders are perverse as they are contrary to the Court Commissioner's report. However, the same is not borne out on consideration of all the evidence before it, particularly the Court Commissioner's report when considered along with other facts/ evidence on record to come to a *prima facie* view at the interim stage. Therefore, the view taken by the impugned order would not warrant any interference, in my jurisdiction under Article 227 of the Constitution of India. Accordingly, **Petition dismissed**. No order as to costs.

7 However, at the request of the parties, it is made clear that if

they make an application for expeditious hearing of the suit to the Trial Court, same would be considered by the Trial Court, sympathetically.

8 It is needless to state that the impugned orders have been passed at the interim stage and they would in no way affect the final decision which would be taken on the basis of evidence after full-fledged hearing by the Trial Court. All contentions left open.

(M.S.SANKLECHA,J.)