

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13313 OF 2017

Vilas Laxman Patil	]	
Age : 66 years, Occ. Agriculturist,	]	
R/of Bugadikatti, Tal. Gadhinglaj,	]	
District Kolhapur.	]	 Petitioner

Versus

1. Ananda Laxman Patil	]	
Age : 68 years, Occ. Agriculturist,	]	
R/of Bugadikatti, Tal. Gadhinglaj,	]	
District Kolhapur.	]	
	]	
2. Suryaji Laxman Patil	]	
Age : 62 years, Occ. Agriculturist,	]	
R/of Bugadikatti, Tal. Gadhinglaj,	]	
District Kolhapur.	]	
	]	
3. Netaji Laxman Patil	]	
Age : 63 years, Occ. Agriculturist,	]	
R/of Bugadikatti, Tal. Gadhinglaj,	]	
District Kolhapur.	]	 Respondents

Mr. Manoj A. Patil for the Petitioner.

Mr. G.N. Salunke, i/by Mr. Vinayak Phadake, for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH DECEMBER 2017.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Patil, learned counsel for the Petitioner, and Mr. Salunke, learned counsel for the Respondents.

2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 17th May 2017 passed by the District Judge-1, Gadhinglaj, thereby allowing the Miscellaneous Civil Appeal No.9 of 2017. The said Appeal was preferred by the Original Plaintiff, i.e. Respondent No.1 herein, challenging the order dated 10th February 2017 passed by the Court of 2nd Joint Civil Judge, Junior Division, Gadhinglaj, Taluka Gadhinglaj, District Kolhapur, below application "Exhibit-5" filed in Regular Civil Suit No.121 of 2015. The said application was filed for interim injunction restraining the present Petitioner, i.e. Original Defendant, from causing any obstruction to the possession of Respondent No.1-Plaintiff over the suit property.

3. The case of the Respondents is that, the suit property is originally belonging to the joint family and by virtue of the partition effected by their father, the parties having their separate possession and cultivation over the said properties. However, on 17th June 2015, Defendant No.1 sowed '*Soyabin*' in some portion of the suit property and thereby obstructed the Respondent No.1's possession over the remaining property and hence, as he has apprehension of dispossession from the suit property at the hands of the Petitioner, he filed a suit, simplicitor, for injunction along with the application for interim injunction.

4. This Suit and application for interim injunction came to be resisted by the Petitioner vide his written statement and say below Exhibit-23 contending, *inter alia*, that, as per the partition effected by the father, the joint family properties are in respective possession of the Petitioner and Respondent No.1. He has not made any encroachment over the properties, which have gone to the share of the Plaintiff and, therefore, there was no question of granting any relief of interim injunction.

5. The Trial Court, after considering the material on record and the submissions advanced at bar, held that, there was no dispute about ownership over the suit property; however, there was dispute about possession over respective shares of the properties. It was held that, whether Petitioner has made encroachment on the property in possession of the Plaintiff and thereby causing obstruction to the Plaintiff, can be decided only after thorough inquiry and for that purpose trial is necessary. It was further held that, the material brought on record was not sufficient to decide the sides and boundaries of the respective shares of Petitioner and Respondent No.1. The Trial Court thus held that, if the application is allowed at this stage, it would amount to granting final relief to Respondent No.1 and, that too, without inquiry and trial and hence, the Trial Court has rejected the Respondent No.1's application for interim injunction.

6. When the matter was taken up before the Appellate Court by Respondent No.1, the Appellate Court held that, as the respective possessions and the fact that the property was already partitioned by the father is not disputed, it is necessary to restrain the Petitioner from causing obstruction to the possession of Respondent No.1 and, accordingly, the Appellate Court allowed the Appeal.

7. After hearing submissions advanced at bar by learned counsel for the Petitioner and Respondents in this Writ Petition, it can be seen that, though both the parties are not disputing the fact that the father has effected partition of the ancestral properties and they are in respective possessions of the shares allotted to them, now it is Respondent No.1, who is coming before the Court and stating that the Petitioner has, with an intention to commit encroachment and extract the land which has gone to the share of Respondent No.1, sowed '*Soyabin*' crop in some portion of his land. There are clear averments to that effect in paragraph Nos.5 and 6 of the plaint and application. It is also further stated that, Respondent No.1 has confronted to the Petitioner as to how he has sowed '*Soyabin*' in the land allotted to the share of Respondent No.1. Thus, the case put up by Respondent No.1 is that, the Petitioner has already made some encroachment on the land in his possession by sowing the '*Soyabin*' crop and, therefore, he has apprehension of further encroachment and dispossession at the hands of the Petitioner.

8. Thus, when Respondent No.1 is coming before the Court with a case of encroachment, the proper remedy for him was to get the suit land measured and to point out, at the time of filing of the Suit itself, in the plaint that this much portion of the land is already encroached by the Petitioner and, therefore, there is apprehension and that apprehension is reasonable that the Petitioner may further encroach and dispossess him from the suit land. However, the Plaintiff has not done so. He has filed a Suit simplicitor for injunction and on the vague averment that, the Petitioner is likely to commit encroachment on his property, he is restraining the Petitioner from doing so. Thus, it is clear that under the garb of seeking the relief of interim injunction, there is every likelihood that, Respondent No.1 will not allow the Petitioner to cultivate his own land and that cannot be permitted, unless Respondent No.1 shows that there is some substance in his contention that Petitioner is trying to encroach on his land and he has already committed such encroachment by sowing '*Soyabin*'. Respondent No.1 has not done any of these things and, therefore, it is clear that, on the pretext of seeking such apparently innocuous relief of interim injunction, he is creating obstruction in the possession of the Petitioner over his own land. The learned Appellate Court has, however, not considered this material aspect of the case and as a result, the discretion exercised by the Trial Court judiciously on factual aspects is

unnecessarily disturbed, without recording the finding that order passed by the Trial Court is illegal or perverse. The impugned order, therefore, passed by the Appellate Court being without merits, needs to be set aside.

9. The Writ Petition is, accordingly, allowed. The impugned order passed by the Appellate Court on 17th May 2017, in Miscellaneous Civil Appeal No.9 of 2017, is set aside and the order passed by the Trial Court on 10th February 2017, below Exhibit-5 in Regular Civil Suit No.121 of 2015, is restored.

10. At this stage, learned counsel for Respondent No.1 requests that status-quo be maintained and Trial Court be directed to expedite the trial. Learned counsel for the Petitioner has strongly opposed the said prayers.

11. In view of the disposal of the Writ Petition, there is no question of granting or maintaining the status-quo. Hence, the prayer to that effect is rejected.

12. Rule is made absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]