

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

WRIT PETITION NO. 13244 OF 2016

Shri Dnyanu Vithu Gade-Patil
and Anr.

..Petitioners.

Vs

Shri Chalu Santu Bamane and
Ors

.. Respondents

Mr. Amit B.Borkar, Advocate for Petitioners.

Mr. T.S. Ingale a/w Nikhil Pawar i/b Mr. Tejas Hilange, Advocates
for Respondents.

CORAM : R.G.KETKAR,J.

DATE : 03/02/2017

PC:

1. Heard Mr. Amit Borkar, learned counsel for the petitioners and Mr. Tejpal Ingale, learned counsel for respondents no.1 to 5 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants no.1 and 2, have challenged the Judgment and order dated 27.9.2016 passed by the learned District Judge-1, Gadhinglaj in Misc. Civil Application No. 34 of 2013. By that order, the learned District Judge allowed the Appeal preferred by the plaintiffs and quashed and set aside the judgment and order dated 10.7.2013 passed by the learned Civil Judge, Jr. Dh., Ajara below Exhibit-5 in R.C.S. No.39 of 2013. The learned District Judge issued injunction restraining defendants no.1 and 2 from causing obstruction to

the plaintiff's possession over adjacent lands bearing Gat nos.229, 370, 372, 554 and house property, situate in City Survey no.826 as also issued injunction restraining defendants no.1 and 2 from felling the trees and creating third party interest.

3. Mr. Borkar submitted that though in paragraph 12 of the impugned order the learned District Judge observed that the plaintiffs are in joint possession and, therefore, they cannot be dispossessed and that their prayer for restraining the defendants from felling their tress can be granted, in the operative part of the order, the learned District Judge has issued injunction against the defendants from causing obstruction to their possession. He submitted that the said direction may be clarified to the effect that the plaintiffs' joint possession with defendants no.1 and 2 should not be disturbed. Mr. Borkar fairly did not dispute that defendant no.1 claims rights on the basis of Will of Chandrabai Bamane dated 5.9.1976 which was held not to be proved in R.C.S. No.80/91.

4. Mr. Ingale states that he has no objection for clarifying the order to the effect that the plaintiffs' joint possession should not be disturbed by defendants no.1 and 2. In view thereof, Petition is disposed of subject to following clarification.

5. Impugned order is maintained subject to the clarification that the plaintiffs' joint possession with defendants no.1 and 2 in

respect of lands bearing Gat no.229, 370, 372, 554 and house property situate in City Survey no.826 shall not be disturbed. Rest of the injunction order restraining defendants no.1 and 2 from felling trees and creating third party interest, is maintained. Order accordingly.

(R.G.KETKAR, J.)