

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 WRIT PETITION NO. 13685 OF 2017

USHA RAMESH AHER AND ANOTHER
VERSUS
CHANDRALEKHA DHONDIRAM KAKADE

.....

Advocate for Petitioners : Mr. Dixit Satyajeet S.
Advocate for Respondent-sole : Mr. Shivaji T. Shelke

.....

CORAM : V. K. JADHAV, J.
DATED : 04th APRIL, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. By way of this Writ Petition, the petitioners/original defendants have challenged the judgment and order dated 25.10.2017 passed by the District Judge-1, Sangamner in Miscellaneous Civil Appeal No. 19 of 2017.
3. Brief facts giving rise to the present Writ Petition are as follows:

The respondent/original plaintiff has instituted Regular Civil Suit No. 542 of 2017 for a decree of perpetual injunction

against the petitioners in respect of the suit land gat no. 59 and also filed an application exhibit 5 for issuance of temporary injunction to protect her possession over the suit land gat no. 59. The trial court, by order dated 12.06.2017, rejected the application exhibit 5. Being aggrieved by the same, the respondent/original plaintiff has preferred Misc. Civil Appeal No. 19 of 2017 before the District Court, Sangamner and the learned District Judge-1, Sangamner, by the impugned order dated 25.10.2017, allowed the said appeal and quashed and set aside the order passed by the trial court and restrained the present petitioners from interfering in the possession of the plaintiff over the suit land till disposal of the suit by allowing the application exhibit 5. Hence this Writ Petition.

4. The learned counsel for the petitioners submits that the petitioners are having no concern with the suit land gat no. 59. As per the pleadings of the respondent/plaintiff, during the course of measurement of one another land gat no. 57, the concerned Surveyor has tried to erect poles in the suit land gat no. 59, and accordingly, she had instituted the suit for a decree of perpetual injunction as against the present petitioners in respect of the suit

land gat no. 59. The learned counsel submits that there is land gat no. 58 in between the suit land and land gat no. 57. The petitioners have instituted Special Civil Suit No.4 of 2015 in respect of the land gat no. 58 against the vendors and in the said Special Civil Suit, succeeded in obtaining order of temporary injunction over the land gat no. 58 against the vendors. The learned counsel submits that the respondent/original plaintiff, on the other hand, is trying to encroach upon the portion of the land gat no. 58 and instituted false suit and also filed application exhibit 5 to protect her so called possession over the suit land gat no. 59. The learned counsel submits that the trial court has rightly observed that there is no interference in the peaceful possession of respondent/plaintiff over the suit land gat no. 59 on the part of the petitioners and as such, respondent/plaintiff is not entitled for protection of her land by issuing order of temporary injunction.

5. The learned counsel for the respondent/plaintiff submits that the respondent/plaintiff has specifically pleaded that while carrying out measurement of land gat no. 57 by its owner for fixation of boundaries, the measurement poles came to be erected in the suit land even though there is one another land gat no. 58

situated in between the suit land and land gat no. 57. Thus, the respondent/plaintiff has filed complaint before the Deputy Superintendent of Land Records and accordingly, the Deputy Superintendent of Land Records has given specific instructions to the Surveyor and even he has changed the earlier Surveyor who has carried out the measurement of the land gat no. 57. Even the Deputy Superintendent of Land Records has noticed some foul play in the earlier measurement of land gat no. 57 and erection of temporary poles of measurement in the suit land gat no. 59. The learned counsel submits that the respondent/plaintiff has also filed a complaint in the concerned police station against the petitioners for giving her threats in respect of the suit land gat no. 59. The learned counsel submits that there is sufficient material placed on record to point out that the petitioners are trying to interfere in the peaceful possession of the respondent/plaintiff over the suit land gat no. 59 and accordingly, the lower appellate court has rightly allowed the application exhibit 5.

6. On careful perusal of the order passed by the trial court as well as the judgment and order passed by the lower appellate court, it appears that there is a land gat no. 58 in between the suit

land and land gat no. 57. Admittedly, land gat no. 57 is owned by some other person and at his instance, measurement was carried out in his land through the Deputy Superintendent of Land Records, Sangamner. Thus, there was no reason to fix the measurement poles, though temporarily, in the suit land gat no. 59 at the time of carrying out measurement in the land gat no. 57. Those measurement poles are generally erected to fix the boundaries and the petitioner has therefore approached the concerned authority by filing a complaint on 10.04.2017. On 08.05.2017, the Deputy Superintendent of Land Records, Sangamner has informed the respondent/plaintiff in writing that there is some substance in her complaint and also informed her that he has changed the earlier Surveyor and requested her to remain present at the time of carrying out measurement of the said land gat no. 57. It also appears that the respondent/plaintiff has also filed a complaint in the concerned police station on 11.04.2017 against the petitioner no. 2 herein and accordingly, the N.C. Complaint No. 144/2017 came to be registered for the offence punishable under Sections 504 and 506 of the Indian Penal Code. On perusal of copy of the said N.C. Complaint, it appears that the present petitioner no.2 has given threats to the

respondent/plaintiff in respect of the suit land. After this complaint, the respondent/plaintiff has instituted the suit on 21.04.2017 for a decree of perpetual injunction as against the present petitioners and also filed an application exhibit 5 for issuance of order of temporary injunction. It further appears from the documents placed on record that the petitioners have also instituted Special Civil Suit No. 4 of 2015 for specific performance of contract alongwith a decree of perpetual injunction in respect of the land gat no. 58 and the other lands against their vendors and the trial court has also protected possession of the petitioners over the land gat no. 58 by allowing application exhibit 5 in the said Special Civil Suit No. 4 of 2015. It is thus clear that unless and until intervened by the petitioners, the measurement poles could not have been erected in the suit land gat no. 59 while carrying out measurement of the land gat no. 57. The lower appellate court has thus rightly drawn an inference about the interference in the peaceful possession of the plaintiff over the suit land on the part of the petitioners/original defendants. The petitioners have not disputed the title and possession of the respondent/plaintiff over the suit land gat no. 59. Though the learned counsel for the petitioners has vehemently submitted that

under the garb of this suit, the respondent/plaintiff is trying to encroach upon the land gat no. 58, however, I find no substance in the same for the reason that the petitioners have not filed any counter claim to seek a decree of injunction against the respondent/plaintiff, nor carried out any amendment in the written statement owing to any event which, according to the petitioners, happened subsequently.

7. In view of the above discussion, I find no fault in the impugned order passed by learned District Judge-1, Sangamner. There is no substance in the Writ Petition. The Writ Petition is hereby dismissed. In the circumstances, there shall be no order as to costs.

8. It is made clear that the observations made herein above are *prima facie* in nature and the trial court to decide the suit on its own merits considering the evidence led by the parties in support of their rival contentions.

(V. K. JADHAV, J.)

vre/