

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3007 OF 2018

Chanappa Namdeo Kumbhar & Ors.	 Petitioners
V/s.	
Hanmant Amasiddha Lohar & Ors.	 Respondents

Mr. Prasad P. Kulkarni for the Petitioners.

Mr. Drupad S. Patil for Respondent Nos.1 and 2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 2ND MAY, 2018.

P.C. :

1. Heard Mr. Kulkarni, learned counsel for the Petitioners, and Mr. Patil, learned counsel for Respondent Nos.1 and 2.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 20th February 2018 passed by the Ad-Hoc District Judge-3, Solapur, thereby dismissing Miscellaneous Civil Appeal No.90 of 2017, which was preferred by the present Petitioners, challenging the order dated 6th May 2017 passed by the Civil Judge, Junior Division, Akkalkot, below the application at "Exhibit-5" in Regular Civil Suit No.34 of 2016.

3. The Regular Civil Suit No.34 of 2016 was filed by Respondent Nos.1 and 2 – the Original Plaintiffs, seeking the relief of injunction and declaration. It was contended therein that the land bearing Gat No.173/2B is owned by Respondent Nos.1 and 2 and the Petitioners have no concern therewith. However, on the basis of the order of interim injunction passed in Regular Civil Suit No.71 of 2012, the Petitioners are causing obstruction to the possession of Respondent Nos.1 and 2 in the said land and, therefore, they should be restrained from doing so.

4. Along with the Suit, Respondent Nos.1 and 2 had also filed an application for interim injunction, which came to be resisted by the present Petitioners, contending *inter alia* that, as Respondent Nos.1 and 2 were trying to make encroachment on their land bearing Gat No.169, they were constrained to file Regular Civil Suit No.71 of 2012. In that Suit, on the application of interim injunction, the Trial Court was pleased to restrain Respondent Nos.1 and 2 herein from causing obstruction to their possession in the land bearing Gat No.169 and thus it was submitted that, Respondent Nos.1 and 2 have no prima facie case and therefore they are not entitled to get any relief of interim injunction.

5. The Trial Court has, after considering the submissions advanced at bar by learned counsel for both the parties and after perusing the litigation in the earlier case and also this case, was pleased to hold that,

prima facie, Respondent Nos.1 and 2 - the Original Plaintiffs have succeeded in making out their case for the relief of interim injunction and, accordingly, granted the same.

6. This order of the Trial Court was confirmed by the Appellate Court, again after re-appreciation of the material on record and holding that the dispute in the earlier Suit filed by the present Petitioners bearing Regular Civil Suit No.71 of 2012 was in respect of the land bearing Gat No.169; whereas, the present Suit clearly pertains to the land bearing Gat No.173/2B. On the basis of the map drawn by the District Land Record Officer, it was held that, the land bearing Gat No.173/2B being a separate land and it is owned and possessed by Respondent Nos.1 and 2-the Original Plaintiffs, they were entitled to get the relief of interim injunction.

7. While challenging this concurrent finding of the fact arrived at by the Trial Court and the Appellate Court, the reliance of learned counsel for the Petitioners is again on the order of the interim injunction passed in Regular Civil Suit No.71 of 2012. However, in my considered opinion, as, both, the Trial Court and the Appellate Court had considered the said order, along with the other material produced on record, and had categorically come to the conclusion that, the land bearing Gat No.173/2B is totally a different land, which is owned and possessed by

Respondent Nos.1 and 2 – the Original Plaintiffs, this Court cannot re-enter into re-appreciation of the material produced on record in the limited scope of the writ jurisdiction.

8. The perusal of the impugned order passed by the Trial Court and the Appellate Court clearly go to show that, both the Courts below have considered this contention of the Petitioners in the light of the fact of the earlier litigation also, in which there is a reference to this map drawn by the District Land Record Officer, which clearly goes to show that the land bearing Gat No.173/2B is the part of the land bearing Gat No.173, which is owned and possessed by Respondent Nos.1 and – the Original Plaintiffs. On account of the road passing from the said land, this portion bearing Gat No.173/2B was separated, which the Petitioners are now claiming to be the part of the land bearing Gat No.169. However, the map drawn by the District Land Record Officer clearly goes to show that, it is a part of the land bearing Gat No.173, which is owned and possessed by Respondent Nos.1 and 2 – the Original Plaintiffs. As observed by the Appellate Court, there is a reference of this map in a different litigation filed by one Kamraj Govind Padmakar also.

9. Thus, when both the Courts below have properly appreciated the material on record and arrived at the concurrent finding of fact holding that, Respondent Nos.1 and 2 – the Original Plaintiffs are in possession

of the land bearing Gat No.173/2B and, accordingly, granted the relief of interim injunction, restraining the Petitioners from causing obstruction in the possession of Respondent Nos.1 and 2, no case is made out to interfere in the said orders in the writ jurisdiction.

10. Hence, the Writ Petition, being without merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]