

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

**CIVIL APPLICATION NO.564 OF 2017
(for injunction)
in
SECOND APPEAL NO.159 OF 2008**

Ashok Pasgonda Patil Applicant

IN THE MATTER BETWEEN

Vidyadhar Appasaheb Patil & ors .. Appellants

VS

Ashok Pasgonda Patil & ors .. Respondents

Mr.V.S.Gokhale for Applicant in C.A.No.564/2017 and
Original Respondent no.1

Mr.P.D.Dalvi for Respondent nos.2A to 2F

Mr.P.M.Arjunwadkar for Original Appellant in
Second Appeal and for Respondents in C.A

**CORAM: A.M.DHAVAL, J
DATE : 10TH OCTOBER, 2018**

P.C

1. Present applicant is the original plaintiff. He had filed Regular Civil Suit No.540 of 2000 in the Court of the Joint Civil Judge, Junior Division, Ichalkaranji against 11 defendants for partition and separate possession and injunction. He had claimed

that he was in exclusive possession of the land of 40 areas from block no.755 which was purportedly gifted by defendant no.1 to defendant nos.5 and 6. His suit came to be dismissed with costs with a finding that he failed to prove his possession over the suit property.

2. He preferred Regular Civil Appeal no.252 of 2005. The appeal was partly allowed. It was held that the plaintiffs was having 14/180 share in the suit properties A to D. Similarly, the defendant nos. 5 and 6 were also held entitled for separate possession of 14/180 share. However, it was held that the plaintiff again failed to prove his exclusive possession over the disputed land. Second Appeal is filed by defendant nos.2 to 4. The original plaintiff has not filed any cross-objections or cross appeal.

3 The appeal was admitted on 24.4.2008.

4. Learned Advocate Mr.V.S.Gokhale for the original plaintiff/respondent no.1 in Second Appeal has preferred this

application to claim temporary injunction against defendant nos.5 and 6 who are respondent nos.1,2 and 3. He submitted that the first appellate Court has granted him share in all the properties including block no.755. It is also held that the Gift Deed executed in favour of defendant nos.5 and 6 is invalid. There was an injunction order in both District Court and Ist appellate Court and the same should be continued as defendant nos.5 and 6 were threatening to dispossess the plaintiff from land Gat no.755.

5. Per contra, Mr.Dalvi for respondent nos.2A to 2F argued that both the lower Courts have concurrently held that the plaintiff failed to prove his possession over the land in question. He has not challenged the said findings. No steps were taken for last 10 years from the date of admission of Second appeal. Hence, this is not a fit case for grant of temporary injunction.

6. The points for my determination as is under :

1. Whether the plaintiff has a prima facie case ?
2. Whether the plaintiff would suffer irreparable loss ?
3. Whether balance of convenience is in favour of the plaintiff ?

7. Earlier concurrent findings of both the Courts is that the plaintiff is not in possession of land Gat no.755 ($\frac{1}{2}$ share admeasuring 40 ares.) These concurrent findings are not assailed by the plaintiff. Though the plaintiff is held to be having 14/180 share in all the properties, he is not in exclusive possession over the property. Until partition is effected the plaintiff as well as defendant nos.5 and 6 are co-heirs. When the plaintiff was not in exclusive possession by way of family arrangement, he cannot claim any temporary injunction against the co-heirs to protect his possession.

8. Besides, he has no *prima facie* case, with regard to exclusive possession over the land Block 755. The Plaintiff has not taken any steps for last 10 years which shows that he would suffer

any irreparable loss and there is no balance of convenience in his favour.

Accordingly, I answer all the points in negative and reject the application.

Civil Application stands rejected. Costs in the cause.

{A.M.DHAVAL, J}