

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

WRIT PETITION NO. 1136 OF 2018

Laxibai Nathu Jamdade
(Since decd.) Through LRs.

... Petitioner

V/s.

Babasaheb Mahadeo Newase & Anr.

... Respondents

- Mr.Dilip Bodakhe for the Petitioner.
- Mr.Tushar L. Pimple a/w. Mr.Pritam Nigade for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th APRIL, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and learned counsel for the Respondents.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 22nd August 2017 passed by the District Judge-4, Satara, thereby dismissing Miscellaneous Civil Appeal No.30 of 2016, which was preferred by the Petitioner challenging the order dated 11th February 2016, passed by the 2nd Jt. Civil Judge, Junior Division, Wai, below the application at Exhibit-5 in Regular Civil Suit No.138 of 2015.

3] The application at Exhibit-5 was filed by the present Petitioner seeking the relief of interim injunction restraining the Respondents or any one on their behalf from causing obstruction to his possession on the basis of the order passed in BND Case No.14 of 2014. The suit was filed simpliciter for injunction seeking the same prayers.

4] Both the trial Court and the Appellate Court had come to the conclusion that in the suit property is owned by the Respondents. In BND Case No.14 of 2014 filed by the Respondents before the Tahsildar under Section 138 (2) of the Maharashtra Land Revenue Code, 1966, the Tahsildar has, after the measurement of the land, come to the conclusion that the said land is owned by the Respondents and the Petitioner has made encroachment thereon and is in possession thereof. Therefore, specific direction was given by the Tahsildar vide his order for evicting the Petitioner from possession of the said land.

5] In view thereof, as per the provisions of Section 138, Sub-Clause 4 of the Maharashtra Land Revenue Code, where any person has been ejected or is about to ejected from any lands under the provisions of Sub-Section (2), he may, within a period of one year from the date of ejectment or the settlement of boundary, institute a Civil

Suit to establish his title thereto. Therefore, the only remedy available to the Petitioner against the order passed by the Tahsildar under Section 138 of the Code was to file a Civil Suit to establish his title to the said land. The Petitioner has, however, not filed any such suit to establish his title to the said land. Conversely, he has filed the suit only for injunction, thereby admitting the title of the Respondents over the suit land. In such situation, the Petitioner has absolutely no case made out to protect his possession, when he has failed to claim or establish his title thereto.

6] Both the Courts below, therefore, have rightly held that the application for interim injunction cannot be allowed. In the concurrent finding of fact arrived at by the trial Court and confirmed by the Appellate Court, no perversity is pointed out, so as to interfere therein.

7] The Writ Petition therefore being devoid of merit, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]