

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

WRIT PETITION (ST.) NO. 11870 OF 2018

Hirabai Atmaram Kamble	...	Petitioner
V/s.		
Dinkar Appu @ Appaso Kamble	...	Respondent

- Mr.Uday Warunjikar a/w. Mr.Vijay B. Dighe for the Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th APRIL, 2018.

P.C. :

1] Heard learned counsel for the Petitioner.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 21st March, 2018, passed by the District Judge-1, Jaysingpur, thereby dismissing Miscellaneous Civil Appeal No.17 of 2018 filed by the present Petitioner against the order dated 12th January, 2018, passed by the Jt. Civil Judge, Junior Division, Jaysingpur, below the application at Exhibit-5 in Regular Civil Suit No.285 of 2017.

3] The application at Exhibit-5 was filed by the present Petitioner seeking the relief of interim injunction restraining the

Respondent from carrying out any construction over the suit property on the ground that she is in lawful possession thereof and Respondent has no concern therewith. It is her case that, Respondent has filed application before Grampanchayat and got some grant in “Ramai Awas Yojana” from Grampanchayat for making construction over the suit property and therefore, Respondent may be restrained from carrying-out such construction over the suit property.

4] At this stage, it may be stated that the Petitioner has already filed suit bearing Regular Civil Suit No.78 of 2015 for establishing her title and also for injunction in respect of the same property.

5] This application for interim injunction came to be resisted by the Respondent, contending *inter-alia* that he is the owner and in possession of the suit property as the suit property is his ancestral property having been purchased by his predecessors in the year 1932 itself. Since, 1984, the names of his predecessors had already been recorded. The Petitioner had suppressed this material fact and hence, she cannot be entitled for the relief of interim injunction.

6] The trial Court has, after appreciating the material on record; especially the Property Register Extract, evidencing that the

name of the Petitioner was no where appearing in the record held that Petitioner has failed to establish her title or possession over the suit property and therefore, rejected her application for interim injunction.

7] When this matter was taken to the Appellate Court, the Appellate Court has also confirmed the said finding, after reconsidering the rival submissions advanced at bar.

8] Thus, both the trial Court and the Appellate Court have arrived at concurrent finding of fact and such finding of fact cannot be disturbed in this Writ Petition, as there is not a single document on record to show that the Petitioner is having any concern over the suit property, much less the ownership or possession thereon. The Property Card Extract shows the name of Respondent and his predecessor for years together. In such situation, both the Courts below, have rightly held that the Petitioner has not made out a *prima-facie* case.

9] The only contention tried to be advanced by learned counsel for the Petitioner is that the construction undertaken by the Respondent is without permission of Grampanchayat. In my considered opinion, this aspect is also considered by the trial Court.

Apart from that, if it is without permission, then it is the Grampanahcyat, which is the competent authority to take action against the unauthorised construction, but the Petitioner, on that pretext, cannot restrict the Respondent from carrying on the construction over the suit property.

10] Both the Courts have thus, after considering all the aspects of the case rightly dismissed the Petitioner's application for temporary injunction.

11] Writ Petition, therefore, being without merits, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]