

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.997 OF 2016

Pandurang Sitaram Patil & Ors. .. Appellants
Versus
Motiram Undrya Patil & Ors. .. Respondents

Mr. Bhardwaj L. Chaudhari for appellants
Mr. Akash D. Warang for respondent No.48

CORAM : DR.SHALINI PHANSALKARJOSHI, J.

DATE : 17th September 2018.

P.C.

Heard learned Counsel for the appellant and the respondents. This appeal is directed against the order dated 12th August 2016 passed by 3rd Joint Civil Judge, Senior Division, Thane, thereby rejecting the application for interim injunction filed below Exh.5 in S.C.Suit No.221 of 2015.

2] The said application was taken out by the appellant herein for grant of temporary injunction restraining respondent No.48 from carrying out further construction or creating any third party rights and/or interest in the suit property.

3] The case of the appellant is that he is the nephew of one Anandibai Patil who has purchased 50% share out of the Survey No.72 Hissa No.2 from one Ambo Patil by a registered sale deed dated 30th August 1958. On the basis of the said sale deed, the name of Anandibai was also mutated in the record of rights. She died intestate without any issue. Therefore, the property devolved upon the appellant being her legal heir. However, respondent Nos. 1 to 3 in collusion with the revenue officials got entered their names in the record of rights by the mutation entry No.174. The said mutation entry was challenged by the appellant before the Revenue Authority in R.T.S. Appeal and the said R.T.S. Appeal was allowed by the S.D.O. However, against the order of S.D.O., the matter is pending before the Collector.

4] In the meanwhile, the respondent Nos. 1 to 47 who are also nephews of deceased have given rights of developments in the suit property to respondent No.48 and he is carrying out construction on some portion of the suit land. Therefore, according to the learned Counsel for appellant, since the land is in his

possession, the respondent No.48 should have been restrained by the trial court from carrying out further construction or creating third party rights and/or interests. It is submitted that the trial court has, however, rejected this notice of motion. Hence, the instant appeal.

5] The perusal of the order passed by the trial court shows that just as the appellant is claiming to be the legal heir of the deceased Anandibai on the ground that he is nephew of the deceased, similarly, respondent Nos. 1 to 47 are also, in the same capacity, claiming to be the legal heirs of the deceased. Their names have also been mutated in the record of rights in the year 1986 itself. Till the year 2014, the appellant had not challenged the said mutation entry. Moreover, though the said mutation entry is set aside in R.T.S. Appeal, the appeal against the said order is still pending before the Collector.

6] The perusal of the order passed by the trial court also goes to show that the development agreement was executed by respondent Nos. 1 to 47 in favour of respondent No.48 on 31st December 2009. It is a registered document and on the basis of

that registered document the respondent No.48 has got the commencement certificate and also got approved the construction plans. As per the order of the trial court, the construction of multi-storeyed building over the suit property is at the stage of completion.

7] Hence, if at this stage, the appellant is granted relief of interim injunction, then, the respondents will suffer irreparable harm, loss and hardship. Thus, neither the balance of convenience is in favour of appellant nor the hardship and irreparable loss which will be caused to appellant will be grave in comparison with the hardship and irreparable loss which would be caused to respondent Nos.48.

8] The trial court has hence rightly rejected the application for temporary injunction. In the view taken by the trial court, no interference is warranted as the said view is justified on record. As a result, the appeal holds no merit and stands dismissed. In view of dismissal of the appeal, the pending civil application therein, also stand disposed off.

Yogeshwar
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(Dr. Shalini Phansalkar-Joshi, J.)