

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1081 OF 2018

Dattatraya Yamaji Balwadkar	 Petitioner
V/s.	
Lata Kunjuni Nair & Ors.	 Respondents

Mr. Saurabh M. Railkar for the Petitioner.

Mr. Amey Deshpande for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 4TH APRIL, 2018.

P.C. :

1. Heard Mr. Railkar, learned counsel for the Petitioner, and Mr. Deshpande, 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 6th December 2017 passed by the District Judge-11, Pune, thereby dismissing the Miscellaneous Civil Appeal No.416 of 2016 preferred by the present Petitioner against the order dated 15th October 2016 passed by the Joint Civil Judge, Senior Division, Pune, below the application at "Exhibit-5" filed in Special Civil Suit No.1589 of 2015.

3. The application at "Exhibit-5" was preferred by the present Petitioner for temporary injunction, restraining the Respondents from

causing obstruction to his possession in the suit land. As per the Petitioner, the area admeasuring 0-20 R., bearing Survey No.23/1C is the suit property, which came to the share of his father by way of registered Partition. Since 2nd December 1993, the suit property is in his possession. He has also constructed compound wall on the land admeasuring 10 R and it is given House No.394. In the remaining land, he is parking his vehicles as well as there is shed towards western side. The Respondents are claiming ownership and possession over the said property. It is also his case that, he has purchased land admeasuring 0-06 R, out of Survey No.23/1C/12 from one Rahul Madhukar Athawale and, therefore, he is in lawful possession of the suit land and Respondents should be restrained from causing obstruction to his possession. The apprehension on his part is that, the Respondents may dispossess him on the basis of measurement carried out by the T.I.L.R. of the suit property, on the request of the Respondent, and the Revenue Authority has, on the basis thereof, fixed the boundaries of the suit land, under Section 138 of the Maharashtra Land Revenue Code, 1966. According to learned counsel for the Petitioner, as he is in possession of the suit land, he is entitled to be protected in respect of his possession over the suit land, at-least, till the decision of the Suit; however, as, both, the Trial Court and the Appellate Court, have rejected his application for temporary injunction to that effect, the impugned order calls for interference at the hands of this Court.

4. At the outset itself, it has to be stated that, in view of the concurrent finding of fact recorded by both the Courts below, in writ jurisdiction, this Court cannot interfere into the same, unless some jurisdictional error or perversity in the finding of the fact arrived at by both the Courts below is pointed out.

5. In my considered opinion, no such perversity or illegality is pointed out in the impugned order passed by the Trial Court and confirmed by the Appellate Court. The only grievance of the Petitioner is that, during pendency of the Suit, his possession should be protected. However, the finding of the fact recorded by the Trial Court and confirmed by the Appellate Court goes to show that, in the measurement carried out by T.I.L.R., it was noticed that it is the Petitioner, who has made encroachment to the extent of 250 sq.mtrs. on the land of the Respondents. In view thereof, if the possession of the Petitioner is that of an encroacher or tress-passer, such possession cannot be protected against the real owner.

6. Accordingly, the Trial Court and the Appellate Court have rightly rejected the application of the Petitioner for interim injunction. Therefore, in the writ jurisdiction, no interference is warranted therein. The Writ Petition, therefore, stands dismissed.

7. At this stage, learned counsel for the Petitioner requests for stay to

this order on the count that, since the filing of the Suit, the order of stay is running till date. In view thereof, the same order of stay is extended for a period of six weeks from today.

[DR. SHALINI PHANSALKAR-JOSHI, J.]