

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.218/2014

Vishnu Abba Bhosale (Patil) ... Petitioner

V/s.

Shankar Abba Bhosale (Patil) ... Respondent

Mr. Rajesh S. Patil for the Petitioner
None for the Respondent

CORAM: K.K. TATED, J.

DATED : FEBRUARY 5, 2019

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India, the Petitioner - Plaintiff challenges the order dated 11.12.2013 passed by the learned District Judge - 1 Islampur, Dist. Sangli dismissing their Misc. Civil Appeal No.19/2013 arising from the order dated 27.02.2013 passed by the Civil Judge, Junior Division, Shirala below Exhibit- 5 in Regular Civil Suit No. 5/2013 rejecting the Petitioner's Application for an order of injunction.

2 The learned counsel for the Petitioner submits that in the present proceedings they filed Regular Civil Suit No. 5/2013 for partition and separate possession of the suit property. He submits that in that suit, they made an Application below Exhibit- 5 under Order 39 Rule 1 to 3 of the Code of Civil Procedure, 1908 for an order of injunction restraining the

Defendant from creating third party right, title and interest in respect of the suit property, which was rejected by the Trial Court on 27.02.2013. Hence, they preferred Misc. Civil Appeal No.19/2013. He submits that at the time of hearing the said appeal, the Respondent - Defendant No.1 gave an undertaking dated 11.12.2013 before the Trial Court that he will carry out construction activity on the house property No.158. He further gave an undertaking that he will not carry out construction on the property bearing No.157. He also gave an undertaking that he will not disturb the possession of the plaintiff from property bearing No.209. He submits that in view of the said undertaking, the appellate court rejected their Misc. Civil Appeal No.19/2013. Paragraph 9 and 10 of the order dated 11.12.2013 reads thus:

“9. On the other hand, it is submitted on behalf of Respondent No.1/ Defendant No.1 that, house property No.158 is his self acquired property. It is submitted that the house properties No.157 and 209 are ancestral properties and he does not intend to make any construction over house property No.157, nor he is intending to dispossess the Plaintiff from house property bearing No.209. Accordingly, the Respondent No.1 has filed undertaking before this court at Exh.30.

10. In view of the undertaking at Exh.30 filed by Defendant No.1, the grievance of the Plaintiff in respect of house properties Nos.157 and 209 does not survive.”

3 The learned counsel for the Petitioner submits that the appellate court has failed to consider the fact that the Respondent - Defendant No.1 failed to bring on record any documentary evidence to show that he has acquired the suit property bearing House Property No.158 at his own. He submits

that in fact, being an elder in the family, the said property was purchased in his name as a Karta. On the basis of this submission, the learned counsel for the Petitioner submits that this Hon'ble Court be pleased to allow the Writ Petition restraining the Respondent - Defendant from creating any third party right, title and interest in respect of the property bearing No.158. He submits that if the Writ Petition is not allowed, irreparable loss will be caused to the Petitioner.

4 Heard the learned counsel for the Petitioner at length. Though the Respondents are duly served, none appeared for them. In the present proceedings there are concurrent findings of facts recorded by the courts below. Not only that, the appellate court has specifically recorded in paragraph 11 that Respondent No.1 has proved that house property bearing No.158 was purchased by him. Whether the same was purchased as a Karta or not, would be decided at the time of final hearing of the suit.

5 Considering these facts, I do not find any reason to entertain the Writ Petition against the concurrent findings of facts recorded by the courts below.

6 Hence, the following order is passed:

- a. The Writ Petition stands dismissed.
- b. Hearing of Regular Civil Suit No. 5/2013 is expedited.
- c. No order as to costs.

(K. K. TATED, J.)