

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7694 OF 2018

Vishwas Shamrao Patil ...Petitioner
vs.
Suman Bhimrao Patil and Ors. ...Respondents

Mr. N.N. Pawar, for the Petitioner
Mr. S.A. Rajeshirke, for Respondent Nos. 1 to 7.

CORAM : M. S. SONAK, J.

DATE : MARCH 25, 2019

JUDGMENT

- . Heard learned counsel for the parties.
2. Rule. Rule made returnable forthwith with consent of and the request of learned counsel for the parties.
3. The challenge in this Petition is to the orders made by the trial Court as well as Appeal Court injuncting the Petitioner from putting up the construction of transmission tower on the property which is the subject matter of the partition suit.
4. Mr. Pawar, learned counsel for the Petitioner submits that as per the Plaintiff in the Plaint admittedly the Petitioner is one of the

co-owners in respect of the suit property. He therefore submits that one co-owner cannot restrain the other co-owner from using the co-owned property. Mr. Pawar submits that in any case, the Petitioner proposes to use the small area of hardly 2250 sq.ft. for putting up the tower and this cannot be said to be any unreasonable use of the co-owned property. He submits that the Respondents who are also the co-owners are already enjoying the property which is in their possession. Mr. Pawar submits that the Plaintiff in the suit had neither made a *prima facie* case and in any case the balance of convenience was against the grant of any interim relief. He submits that since these aspects have not been considered by the two Courts, the impugned order warrants interference.

5. Mr. Rajeshirke, learned counsel for the Respondent Nos. 1 to 7 defends the impugned order on the basis of reasoning reflected therein. He points out that till the Appeal Court has already ordered expeditious disposal of the suit, therefore there is no case made out to interfere with the impugned orders.

6. Upon due consideration of the rival contentions, I am

satisfied that in the facts and circumstances of the case, no interference is warranted with the impugned order but further direction can be issued to the learned trial Judge to dispose of the suit on merits within time bound schedule.

7. Just as no co-owner can be restrained by the another co-owner in the user of the co-owned property, so also no co-owner can insist upon the undertaking, a permanent construction in the co-owned property without the consent of others. In this case, there is material on record that even the permission from Gram Panchayat concerned has not been granted for the construction of the tower. That apart, from the material placed on record by the Petitioner, such tower is to be erected under an agreement with Reliance Jio Infocomm Ltd. and the term of such agreement is to be 20 years. The two Courts have considered the effect of such proposal, particularly since Reliance Jio Infocomm Ltd. is not party to the suit until then claim that it is not bound by any order in the suit.

8. Both the Courts in the present case have exercised discretion reasonably and there is no unreasonableness in the exercise of

discretion. The Petitioner has not established that two Courts have adopted some incorrect legal principle in the matter. Therefore, taking into consideration the law laid down by the Apex Court in ***Wander Limited and Anr. vs. Antox India Pvt. Ltd., 1990 (Supp.) Supreme Court Cases 727*** there is no case made out to interfere with the impugned order.

9. Accordingly, this Petition is dismissed. There shall be no order as to costs.

10. The learned trial Court is directed to dispose of Regular Civil Suit No. 163 of 2018 as expeditiously as possible and in any case within a period of one year from today.

11. As directed by the Appeal Court both the parties to cooperate with the learned trial Judge for expeditious disposal of the suit on merits.

12. Further it is clarified that the suit will have to be decided on its own merits and in accordance with law without being influenced by any of the observations in the impugned order as

well as any observations in the present order.

13. Rule is discharged accordingly.

14. All concerned to act on the basis of authenticated copy of the order.

(M. S. SONAK, J.)