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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9331 OF 2018

Latif Sayyed Pathan ..Petitioner.
V/s.
Prabhakar Abaji Shivalkar & Ors. ..Respondents.

Mr.Umesh R.Mankapure for the petitioner.

Mr.Sandesh Patil with Ms.Anusha Amin & Chintan Y.Shah for
respondent Nos.1 to 3.

CORAM : M.S.SONAK, J.

DATE : MARCH 26, 2019

ORAL JUDGMENT

Heard Mr.Mankapure, learned counsel for the petitioner
and Mr.Patil, learned counsel for respondent Nos.1 to 3.

2. Challenge is to the order dated June 12, 2018 made by the
learned Appeal Court, the operative part of which reads as follows :-

“1. *Appeal is allowed.*

2. *The impugned order dated 06.12.2017 passed below Exhibit 5 in Regular Civil Suit No.77/2017 by learned Vth Civil Judge, Jr. Dn. Sangli is hereby set aside.*

3. *Application Exh.5 made absolute in terms of prayer clause 'A'.*

4. *The defendants are hereby temporarily restrained from disturbing the possession and administration of the plaintiffs in the suit land, till further order.*

5. *The defendant No.1 shall bear costs. ”*

3. Mr.Mankapure, learned counsel for the petitioner submits that there is an overwhelming evidence on record that the petitioner is in possession of the suit property and they are carrying out business of fabrication. He submits that the title of the petitioner is based upon documents. However, since the documents are unregistered, learned trial Court has refused to place reliance upon them. Mr.Mankapure submits that such documents were required to be taken into consideration for collaterally establishing the possession of the petitioner. Mr.Mankapure submits that respondents have filed a case claiming to be in possession of the suit property and on the basis of which, claimed permanent injunction. Mr.Mankapure urged that the petitioner is running a fabrication business and, therefore, the impugned judgment and order warrants interference.

4. Mr.Patil, learned counsel for the respondents defends the impugned order on the reasoning reflected therein.

5. In the present case, the survey record relating to the suit property indicates the name of respondent. The petitioner has not produced any documents to show the alleged fabrication unit was put up by the petitioner after obtaining any permission from the local authority. Learned Appeal Court in paragraph 15 of the impugned order

has recorded a finding, no doubt, a prima facie finding that the petitioner had attempted to fabricate document in a bid to show that he is in possession of the suit property.

6. The finding in paragraph 14 of the impugned order reads thus:-

“15. Admittedly, neither plaintiffs nor defendants have produced documentary evidence along with their respective pleadings. Defendant No.1 has produced documentary evidence after completion of argument on Exh.5 and to rebut those documents plaintiffs have produced the documents in the nature of certified copies in this appeal. Those documents are in the form of the record of Municipal Corporation of Sangli. The defendant No.1 has placed his reliance upon notice of Corporation which was received under heading of जसीपुरविची नोटीस. It is dated 28-08-2013. It was given in respect of property number 119/576 and name of defendant No.1 in respect of property number 119/576 and name of defendant No.1 is present. In between name of defendant No.1 and the property number the words inserted i.e. “Survey No.475/ 5A/1”. Without any help one can notice this fact and difference in the hand writing. No expert opinion is required. Mr.Kore rightly pointed out this fact. This fact is manipulated and nothing more. This notice loses its legal sanctity.”

7. The Appeal Court, based upon the survey record has recorded a prima facie finding that it is the respondent who are in possession of the suit property. Even otherwise, it is not the case of the

petitioner that the respondents are any strangers to the suit property. However, the petitioner claim to have acquired the suit property from the predecessor-in-title of the respondents on payment of amount of Rs.40,000/-.

8. There is no error in the *prima facie* finding recorded by the Appeal Court so as to warrant interference in the impugned order. Ultimately, this order is made at the interim stage and both the parties can present the case on merits.

9. For all the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

10. It is made clear that the findings in the impugned order and for that matter the aforesaid observations need not influence the Appeal Court while deciding the appeal on its own merit and in accordance with law.

11. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)