

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.5442 OF 2016

Shri Maruti Pandurang Pote ... Petitioner

Vs

Shri Manikrao Mahadev Pote and Ors. ... Respondents

...

Mr. Yuvraj P. Narvankar with Mr. Vasant Kadam for the
Petitioner.

None for the Respondents.

CORAM : SANDEEP K. SHINDE J.

DATE : JUNE 24, 2019

P.C. :

Petitioner instituted Regular Civil Suit No.320 of 2013 seeking decree of perpetual injunction. Pending suit, he filed an application for temporary injunction to restrain the defendants from interfering with his possession in the suit property. The trial Court as well as appellate Court in Miscellaneous Civil Appeal No.41 of 2014 declined to grant interim protection. It is against the order dated 8th October, 2015 passed in Miscellaneous Civil Appeal No.41 of 2014 by the Ad-hoc District Judge-4, Baramati, this petition is preferred.

2 In view of the concurrent findings recorded by the Courts below, I am not inclined to interfere with the impugned order. That even otherwise relief has been refused to the petitioner in the year 2014 and, thereafter by the appellate Court in October, 2015 that is almost five years before.

3 He has invited my attention to the observations and findings recorded by the learned appellate Court in paragraphs 18,19,26 and 27. However, the learned counsel for the petitioner has also taken me through the plaint, to submit that suit for injunction was not on title but it refers to revenue entries, made on the basis of relinquishment executed by their predecessor in title of the defendants. The learned appellate Court in paragraph 18 though observed that it is not necessary to enquire into title of plaintiffs, however, further observed that while deciding the application for temporary injunction, the Court has to see prima-facie possession and possession pre-supposes lawful title. The learned appellate Court thus, held in paragraph 26 that the predecessor in title of the plaintiffs does not become owner on the basis of mutation entry

no.2486.

4 Thus, the findings and observations made by the appellate Court in paragraphs 18,19,26,27,31 and 32 touches the issue of title of the plaintiffs to the suit property though suit is not on the title but refers to the orders passed by the revenue authorities. Thus, the finding in relation to plaintiff's title to the suit land recorded by the appellate Court though on prima-facie consideration of material, may cause prejudice to his right in case, he institutes suit for declaration of his title to the suit property. That even otherwise, the learned trial Judge while deciding the suit shall decide the same on its own merits without being influenced by the observations made by the appellate Court in Miscellaneous Civil Appeal No.41 of 2014. That with these observations, writ petition is disposed of. Hearing of the suit is expedited.

(SANDEEP K. SHINDE, J.)