

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

WRIT PETITION NO. 8237 OF 2017

Anita Popat Salunkhe
V/s.

.. Petitioner

Suresh Pratap Solankar & Anr.

..Respondents

Mr. Mahindra Deshmukh for the Petitioner.

Mr. Prithviraj Gole i/b Divya Pawar-Patil, for the Respondent No.1.

CORAM : C.V. BHADANG, J.

DATE : 02nd DECEMBER, 2020

P.C.

1. The challenge in this petition is to the judgment and order dated 21.03.2017 passed by the learned District Judge, at Sangli in Misc. Civil Appeal No. 144 of 2016. By the impugned Judgment, the order passed by the learned Trial Court on 18.07.2016 in Regular Civil Suit No. 204 of 2015 granting temporary injunction in favour of the petitioner/plaintiff has been set aside.

2. The brief facts are that the aforesaid suit is filed by the petitioner against the respondents for partition, separate possession

and for consequential reliefs. The suit property consists of a plot of land admeasuring 4 Ares, more specifically described in plaint.

3. The petitioner happens to be the daughter-in-law of second respondent. Shivaji Salunke, who was the father-in-law of the petitioner has expired on 06.02.1976. Shivaji had two sons namely Popat and Shashikant. Both are dead. Popat who was the husband of the petitioner, died on 05.07.1999. Shashikant is said to have expired issue-less.

4. The case made out by the petitioner is that the suit property was the ancestral property of family of Popat and Rukhmini. The record discloses that the suit property was purchased by Rukhmini in her own name by registered sale deed dated 13.01.1987 for a consideration of Rs.6,000/-. The first respondent has purchased the suit property from the second respondent on 26.03.2014. The second respondent contended that the suit property was herself acquired property in which the petitioner has no right, title or interest.

5. Be that as it may. The petitioner sought temporary injunction restraining the first respondent from making any permanent

construction or changing the nature of the property and/or creating any third party interest in the same.

6. The learned Trial Court by an order dated 18.07.2016 had granted temporary injunction, which order has been set aside in appeal.

7. I have heard the learned counsel for the petitioner and the learned counsel for the first respondent. Perused record.

8. It is submitted by the learned counsel for the petitioner that there are clear pleadings that the suit property was the ancestral property of the family and the first appellate Court was in error in interfering with a well reasoned order passed by the Trial Court granting injunction. It is submitted that the first appellate court has not properly appreciated the pleadings of the petitioner in which she has claimed that the suit property was ancestral and joint family property of Rukmini and Popat. It is submitted that the construction permission obtained by the first respondent from Municipal Council Vita has expired and therefore, the construction undertaken by the first respondent is illegal and unauthorised. It is next submitted that even otherwise the construction permission was only for two floors.

However, the photographs produced on record, show that the construction is of three floors which is in excess of the permission granted. It is submitted that if third party interest is created in the suit property, it will seriously prejudice, the rights and interest of the petitioner to the suit property.

9. The learned counsel for the respondent no.1 has supported the impugned order. It is submitted that the sale deed of the year 1987 is standing in the name of the first respondent and even the Record of Rights, shows the name of the first respondent as owner. The learned counsel has pointed out a letter dated 20.10.2020, by which the construction permission has been extended up to 06.07.2021. He submitted that even assuming that the construction is not in accordance with the permission, it is a matter essentially between the Municipal Council and the first respondent.

10. I have considered the circumstances and the submissions made. As noticed earlier, the basic ground on which the suit is filed is that the suit property is the ancestral and joint family property of Rukhmini and Popat. Prima facie, it can be seen that the property is shown to be purchased by Rukhmini under the sale deed of the year 1987 for a consideration of Rs.6,000/-. Even the Record of Rights

are standing in the name of Rukhmini. Thus, prima facie at this stage no exception can be taken to the finding recorded by the first appellate Court that the petitioner has failed to show that the suit property is the joint family property of Rukhmini and Popat i.e. husband of the petitioner. The said issue, would be required to be gone into at the trial of the suit. It is necessary to note that the suit property has been purchased way back in the year 1987 and till 2015, there was no claim made about the property being the joint family property of Rukhmini and Popat and not exclusive property of Rukhmini. Once the petitioner has failed to establish such a prima facie case, the necessary consequence is that the petitioner is not entitled to the temporary injunction as prayed for.

11. Insofar as the aspect of permission is concerned, the respondent no.1 has now produced a letter of Municipal Council, Vita dated 20.10.2020 showing that the permission has been extended till 16.07.2021. If there is any deviation and if the construction is not in accordance with the permission, it is essentially a matter between the Municipal Council, Vita and the first respondent. It is always open for the Municipal Council to take action in the event the construction is found to be in breach of the construction permission. However, that itself would not entitle the

petitioner to grant of a temporary injunction, in the absence of the requirement of prima facie case being satisfied.

12. I have carefully gone through the impugned judgment and I do not find that it suffers from any infirmity, so as to require interference.

13. The petition is accordingly, dismissed with no order as to costs.

14. At this stage, the learned counsel for the petitioner sought extension of the interim relief. In the given circumstances and particularly considering the fact that the interim relief was granted only on the ground that construction permission has expired and once it is shown that the permission is renewed, I do not find that a case for extension is made out. The prayer is accordingly rejected.

C.V. BHADANG, J.