

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4726 OF 2014

Shaikh Shakeel s/o. Shaikh Budhen,
 Age 51 years, Occu. Business,
 R/o. Garkheda, Taluka and
 District Aurangabad

.. Petitioner
 (Original Defendant)

Versus

1. Mohd. Rauf s/o. Mohd. Zahur
 Age 58 years, Occu. Pensioner,
2. Mohd. Younus s/o. Mohd. Yousuf,
 Age 48 years, Occu. Service,
3. Mohd. Hanif s/o. Mod. Yousuf,
 Age 48 years, Occu. Service,
4. Mohd. Asif s/o. Mohd. Noor Siddiqui,
 Age 40 years, Occu. Business,
5. Mohd. Javed s/o. Mohd. Noor Siddiqui,
 Age 28 years, Occu. Business,
6. Mohd. Shakir s/o. Mohd. Noor Siddiqui,
 Age 26 years, Occu. Business,
7. Mohd. Arif s/o. Mohd. Noor Siddiqui,
 Age 28 years, Occu. Business,
 All R/o. Moti Karanja, Mondha Road,
 Aurangabad
 Through their G.P.A. Mohd. Khaleq s/o.
 Mohd. Noor Siddiqui, Age 31 years,
 Occu. Business, R/o. As above

.. Respondents
 (Original Plaintiffs)

...

Mr. Ajit D. Kasliwal, Advocate for Petitioner
 Mr. Hamzakhan I. Pathan, Advocate for Respondents No.1 to 5
 Respondents no. 6 and 7 - served

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 26-11-2021

JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally, with consent of both the parties.

2. This petition takes an exception to the order passed by the learned District Judge - 4, Aurangabad, in Miscellaneous Civil Application No. 145 of 2013, thereby, modifying the order passed by learned 12th Joint Civil Judge, Junior Division, Aurangabad below application (Exhibit-5) and granting temporary injunction in favour of the plaintiffs only in respect of 7 Hector 82 R land belonging to the plaintiffs out of Gat No. 48.

3. Regular Civil Suit No. 485 of 2013 was filed by the plaintiffs-respondents against the petitioner-defendant for declaration, mandatory injunction and perpetual injunction. In the claim clause (A) declaration that the plaintiffs are the lawful owner and possessors of suit land Gat No. 48 situated at Garkheda, Taluka and District Aurangabad, admeasuring 12 Hector 2 R to the extent of 7 Hector 82 R, is claimed. In Clause (E), perpetual injunction that the defendant or anybody claiming through him, be restrained from interfering or obstructing peaceful possession of plaintiffs on 12 Hector 2 R land, the boundaries of which are

mentioned from Gat No. 48, is claimed. The prayer clause (B) of the plaint, declaration in respect of 7 Hectar 82 R land is prayed out of 12 H 2 R is sought and by prayer clause 'F' of the plaint, injunction in respect of land Gat No. 48 is sought.

Along with the plaint, temporary injunction application (Exhibit-5), under Order XXXIX, Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 ("CPC", for short), was filed by the plaintiffs.

4. The defendant appeared and resisted the claim of plaintiffs by filing written statement as well as say to the application (Exhibit-5). The trial Court allowed application (Exhibit-5) and granted injunction in favour of plaintiffs restraining the defendant or anybody claiming through him from interfering or obstructing possession of the plaintiffs over the suit land Gat No. 48.

The defendant has challenged the order of the trial Court by filing M.C.A. No. 145 of 2013. The appellate court dismissed the appeal, however, modified the order of the trial Court, thereby granting temporary injunction to the extent of 7 Hectar 82 R land belonging to the plaintiffs from out of Gat No. 48. This order is impugned by the petitioner-defendant in the present petition.

5. Heard the learned Advocate for petitioner-defendant and the learned Advocate for respondents-plaintiffs.

6. The learned Advocate for the petitioner-defendant submitted that, taking into consideration the claim clause and the prayer clause, the appellate Court was not justified in granting temporary injunction in favour of the respondents-plaintiffs in respect of 7 Hecter 82 R land from Gat No. 48, which was not identified in the plaint. In terms of Order VII, Rule 3 of the CPC, it was necessary on the part of plaintiffs to identify the property as regards the boundaries to the extent of 7 Hecter 82 R land. Admittedly, the plaintiffs have sold some portion of land out 12 Hecter 2 R land from Gat No. 48. In that view of the matter, he submits that the appellate Court has erred in granting injunction in favour of the plaintiffs to the extent of 7 Hecter 82 R land, in the absence of identification of boundaries. He, therefore, submits that the impugned order passed by the appellate Court is unsustainable and the same be set-aside by allowing the present writ petition.

7. On the other hand, the learned Advocate for the respondents submitted that, it is not in dispute that land Gat No. 48 is owned by the plaintiffs and the defendant is owner of land Gat No. 49. It is not case of the defendant that he has any interest in land Gat No. 48. In that view of the matter, no prejudice is caused to the defendant by the injunction granted in favour of the plaintiffs. He, therefore, submitted that now the

evidence is being recorded in the suit before the trial Court. According to him, no case is made out by the petitioner-defendant to interfere in the impugned order. He, therefore, submits that the writ petition may be dismissed.

8. The suit is filed by the plaintiffs seeking relief of permanent injunction and declaration in respect of land Gat No. 48 admeasuring 12 Hector 2 R, the boundaries of which are mentioned in the plaint. It is fact that the plaintiffs have mentioned in the plaint that some portion of the said land is sold by them by way of plotting, however, fact remains that the plaintiffs are seeking declaration and injunction in respect of total area of 12 Hector 2 R of Gat No. 48 situated at Garkheda, Taluka and District Aurangabad.

It is also not in dispute that, the defendant has no concern with the suit property i.e. Gat No. 48 and the defendant is owner of Gat No. 49. The said fact is reflected in the written statement filed by the defendant in the trial Court. It is also borne on record that the measurement which was carried out by the Land Record authorities and the map about measurement dated 29-02-2012 and 18-01-2013 at the instance of defendant is cancelled vide letter dated 04-05-2013 issued by the Deputy Director of Land Records. The measurement and the map prepared pursuant to

the same on 18-01-2013 at the instance of the plaintiffs, are confirmed. It is also brought on record that the defendant is directed to erect the cement poles for the thorny fencing on the basis of map and measurement carried out on 29-02-2012. Taking into consideration all these aspects, the trial Court came to the conclusion that the plaintiffs have made out *prima facie* case in their favour and the possession of plaintiffs is required to be protected.

9. The appellate Court, on the other hand, concurred with the trial Court only to the extent of injunction in respect of 7 Hectar 82 R land since in the relief clause of the plaint, the plaintiffs have specifically mentioned that they are seeking relief to the extent of 7 Hectar 82 R land and not in respect of 12 Hectar 2 R land. Hence, the appellate Court proceeded to modify the order passed by the trial Court restraining defendant from interfering or obstructing peaceful possession of plaintiffs only to the extent of 7 Hectar 82 R instead of 12 Hectar 2 R land out of Gat No. 48. While recording the said findings, the appellate Court has misread and misconstrued the prayer clause of the application Exhibit-5, wherein, the relief in respect of entire land Gat No. 48 was prayed for by the plaintiffs. From where the appellate Court has got an impression that the plaintiffs have sought relief only in respect of 7 Hectar 82 R land is not clear.

10. The arguments of the learned Advocate for the defendant-petitioner that the boundaries of 7 Hector 82 R land are not mentioned, is not acceptable, in view of the fact the injunction was sought by the plaintiffs for entire Gat No. 48 and the boundaries of Gat No. 48 are already mentioned in the plaint. No substance is, therefore, found in the said arguments of the defendant that in terms of Order VII, Rule 3 of the CPC, the boundaries of 7 Hector 82 R land are not given by the plaintiffs, and therefore, no injunction ought to have been granted in their favour.

11. In view of the aforesaid position, this Court is of the opinion that no case is made out by the petitioner to interfere in the impugned order. The petition is dismissed. Rule is discharged. No order as to costs.

(NITIN B. SURYAWANSHI)
JUDGE

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