

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10161 OF 2019**

Shri Eknath Pandurang Chavan Petitioner.

V/s

Shri Joti Dhondi Chavan Respondent.

Mr. Rahul S. Kadam a/w Maaz Syed for the Petitioner

Mr. Sandeep S. Koregave for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 9, 2021

P.C.:-

1] This Petition is by the original Plaintiff questioning the order of grant of injunction by the lower appellate court whereby prayer for injunction moved in a suit for injunction preferred by the Petitioner/Plaintiff came to be rejected. It is the case of the Petitioner/Plaintiff that by virtue of execution of partition decree in the Regular Civil Suit No.301 of 1974 land Gat No.324 came to his share and that being so, he remained in possession thereof by virtue of execution of the said partition decree.

2] It is further contention of the Petitioner that the Respondent has tried to disturb his possession which has prompted him to file RCS No.

609 of 2018. He would invite attention of this Court to the order of rejection of injunction passed by the Trial Court which was reversed in appeal.

3] The submissions are, once the Petitioner can establish his possession by virtue of execution of decree passed in suit of 1974, it is for the Respondent to establish as to mode and manner of his possession over the suit property. My attention is also invited to various documents which, according to him, are germane to execution of decree in the aforesaid partition suit i.e. RCS No.301 of 1974.

4] While countering the aforesaid submissions, learned Counsel for the Respondent would urge that the order impugned is just and proper and same is based on re-appreciation of documentary evidence and as such he has sought dismissal of the Petition.

5] Considered rival submissions.

6] Fact remains that in the decree for partition passed in the suit of 1974 i.e. RCS No. 301/1974, admittedly, Respondent was not a party.

Apart from above, fact remains that documentary evidence which is considered by the learned lower appellate court particularly the loan taken by the Respondent over the suit property, other revenue record, communication issued by the Petitioner/Plaintiff to the Sugar Factory to accept harvested sugar cane from Respondent sufficiently establishes possession of the Respondent over the suit property. That being so, in my opinion, no case for interference in the impugned order is made out. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)