

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

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Parab

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WRIT PETITION NO.3673 OF 2019

Baban Dinkar Kalange

...Petitioner

Versus

Dinakar Shankar Dhanawade and
Ors.

...Respondents

...

Mr. Pradeep S. Gole for the Petitioner.

Mr. Nikhil Wadikar with Mr. Rupesh Mandhare and Ms Supriya Pillai for
Respondent Nos.1, 2 and 5.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 15th MARCH, 2021.

P.C.:-

The Petitioner herein, has challenged the order dated 28/01/2019 whereby learned Ad-hoc District Judge-2, Satara, allowed Miscellaneous Civil Appeal No.157 of 2016 and set aside order dated 19/09/2016 passed by the Trial Court in an application for injunction at Exh.82 filed in Regular Civil Suit No.289 of 1996.

2. The Respondent No.3 and the Petitioner are the Defendant Nos.1 and 2 and Respondent Nos.1 and 2 are the Plaintiffs in the suit and shall be hereinafter referred to as Defendant Nos.1 and 2 and Plaintiffs respectively. The dispute in the present case is in respect of

half portion of land from Gat No.388 situated at Kalangwadi, Taluka-Wai, District-Satara, which according to the Plaintiffs is an ancestral property. The said half portion of land shall be hereinafter referred to as the subject land. Defendant No.1 is the father of the Plaintiff. The Plaintiff claimed that Defendant No.1, who was an alcoholic, sold the subject land to Defendant No.2 without consent of the other co-owners. The Plaintiffs have filed a suit for partition and separate possession of their 2/3 share.

3. The Plaintiffs had filed an application for injunction seeking to restrain the Defendant No.2 from digging a well in the property and thereby changing the nature of the suit property. The said application was allowed and the Defendant No.2 was restrained from digging a well in the subject land. Defendant No.2 has not challenged the said order. Subsequently, the Plaintiffs filed another application for injunction seeking to restrain Defendant No.2 from disturbing his possession. Said application was dismissed by the Trial Court. By the impugned order the learned District Judge has set aside the order and has restrained Defendant No.2 from changing the nature of the subject land as well as from digging a well in the subject land till final disposal of the suit.

4. Records prima facie indicate that Defendant No.2 has

purchased the subject land and pursuant to which his name has been recorded in the survey records. The order dated 19/09/2016 records that Defendant No.2 is in possession of the subject land. There being no challenge to this findings, the possession of Defendant No.2 cannot be disturbed at the interim stage. The only question is about changing the nature of the subject land. In this regard learned counsel for Defendant No.2 under instructions from Defendant No.2, who is present in the Court, has made a statement that Defendant No.2 will not change the nature of the subject land by digging a well till the disposal of the suit. Statement is accepted. With consent of the parties the petition is disposed of in view of the above statement.

5. It is stated that the issues are already settled. Considering the fact that the suit is of the year 1996, trial court is requested to dispose of the suit as expeditiously as possible and preferrably within one year from the date of receipt of copy of this order.

(SMT. ANUJA PRABHUDESSAI, J.)