

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9043 OF 2021

Aniket Vijay Patil

...Petitioner

Versus

Govind Bhagwan Patil

...Respondent

Mr. S.P. Brahme, Advocate for the petitioner.

Mr. Paresh B. Patil, Advocate for the respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th SEPTEMBER, 2022

ORDER :

1. The petitioner/original defendant is aggrieved by the order passed by 5th Joint Civil Judge, Junior Division, Dhule, below Exhibit-5 in Regular Civil Suit No. 25/2020 and order confirming the same passed by District Judge-3, Dhule in Miscellaneous Civil Appeal No. 21/2020.

2. The respondent/plaintiff filed suit against the petitioner/defendant claiming injunction and declaration that action of defendant of encroaching in the suit property and digging pits is illegal and he should be restrained from doing so. Along with the suit application Exhibit-5 is filed for temporary

injunction. The defendant filed say to Exhibit-5 and opposed it. The Trial Court has allowed the application and restrained the defendant or anybody claiming through him from entering into the suit property, digging pits, doing any construction activity and encroachment in the suit property till final disposal of the suit. Said order is confirmed by the Appellate Court. Hence, the present petition.

3. Heard the learned advocate for the petitioner and learned advocate for the respondent. Perused the documents placed on record and the impugned orders.

4. It appears from the record that there is serious dispute about exact location of the suit property and the property of defendant. From the documents submitted by rival parties, boundaries of the suit property as well as property of the defendant do not match. The Trial Court by taking into consideration the documents placed on record has held that Gaon Namuna no. 8 of village Navalnagar shows name of the plaintiff to suit property i.e. Plot No. 353. The boundaries given on the back side of the original extract of Gaon Namuna no. 8 and on the sale deed of suit property are the same. In the plaint

and sale deed, towards western side of the suit property, property defendant (petitioner) is mentioned.

5. The defendant has disputed the boundaries of the suit property. Even in the original extract of Gaon Namuna No. 8 of the suit property produced by defendant, on the back side shows the boundaries as described by the plaintiff in the plaint. By relying on the documents submitted by the rival parties, the Trial Court has held that in the sale deed of the defendant boundaries are not correctly shown. The Trial Court has arrived at a finding that the boundaries mentioned in the plaint appear to be *prima facie* correct. In that view of the matter, the Trial Court has allowed the application filed by the respondent. The Appellate Court has confirmed the said order.

6. Both the Courts have elaborately discussed the rival contentions and documents placed before them and have arrived at a finding that the plaintiff has made out a *prima facie* case and balance of convenience lies in his favour and irreparable loss would be caused to the plaintiff if injunction is not granted.

7. The Trial Court and the Appellate Court have recorded concurrent finding of fact and have rightly exercised discretion in favour of the plaintiff by recording reasons, which are not liable to be interfered with in extraordinary writ jurisdiction. The writ petition being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI, J.]