

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11097 OF 2021

**VYANKATRAO DADARAO MUNDHE
VERSUS
DIGAMBAR DATTARAO MUNDHE AND OTHERS**

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Advocate for Petitioner : Mr. Mahesh P. Kale
Advocate for Respondent Nos. 1 to 4 : Mr. J. M. Murkute

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 17th AUGUST, 2022

PER COURT :

1. Petitioner is aggrieved by rejection of his Exhibit-5 application by the trial Court and confirmation of the said order by the appellate Court.
2. Petitioner filed Regular Civil Suit No.24/2018 seeking injunction that defendants shall not interfere plaintiff's peaceful possession of the suit property. Alongwith the suit, plaintiff filed application Exhibit-5 seeking temporary injunction against the defendants.
3. The suit is resisted by the defendants by filing written statement. Application Exhibit-5 is rejected by the trial Court holding that the plaintiff has failed to prove *prima facie* case, balance of convenience and irreparable loss. The trial Court has also taken into consideration copy of plaint bearing R.C.S. No.155/2016

(Venkatrao Vs. Gangadhar and Others) i.e. earlier suit filed by the plaintiff for recovery of possession of 14 R land out of the suit property. The trial Court has also taken into consideration the fact that adjacent land owners have made encroachment over the suit property and the plaintiff was having knowledge of the said fact since 2016. Considering the fact that plaintiff himself has filed suit for recovery of possession of 14 R land out of the suit property, the trial Court has recorded a finding that plaintiff was not in possession of entire suit property at the time of filing of the present suit and therefore, plaintiff has failed to prove possession over the suit property.

4. Appellate Court has confirmed the said finding holding that defendant No.1 is in possession over the suit property and he has also filed separate suit for specific performance of contract against plaintiff. It is further observed that, plaintiff has not come with clean hands before the Court, as he has suppressed the material fact that out of the suit property 14 R land is encroached by adjacent land owner, the appellate Court, therefore, held that if injunction is granted in favour of plaintiff, then defendant No.1 will suffer irreparable loss. The appellate Court, therefore, dismissed Misc. Civil Appeal No.06/2019, filed by the petitioner.

5. Having heard the learned advocate for petitioner and

the learned advocate for respondents and on perusal of the documents placed on record, this Court is of the considered view that trial Court as well as appellate Court have passed well reasoned orders. No case is made out by the petitioner to interfere in concurrent finding of fact recorded by the trial Court as well as appellate Court. There is no merit in the petition. Writ petition is, therefore, dismissed.

(NITIN B. SURYAWANSHI, J.)