

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

WRIT PETITION NO.11635 OF 2019

RAMESH NANA WAGH AND OTHERS
VERSUS
SITABAI RAMCHANDRA DESHMUKH

...
Advocate for Petitioners : Mr. S. K. Shinde
AGP for Respondent-sole: Mr. A. N. Nagargoje
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 20th JULY, 2022

ORDER :

1. The petitioners/original defendants are aggrieved by the order dated 01-07-2019, passed by the District Judge-1, Sangamner, District Ahmednagar, below Exhibit-7, in Regular Civil Appeal No.23/2018.
2. The plaintiff/respondent filed Regular Civil Suit No.67/2013 claiming relief in respect of two properties, which were described in plaint para nos.1A and 1B. The property-A is Survey No.66/3, admeasuring 0.58 R., situated at Takali, Taluka Akole, District Ahmednagar. The Trial Court partly decreed the suit and declared that the original plaintiff is owner of property-A (Survey No.66/3, admeasuring 0.58 R.). The respondent/plaintiff challenged the judgment and decree of the Trial Court by filing Regular Civil Appeal

No.23/2018, to the extent it denied the relief in respect of property-B. In the appeal, application (Exhibit-7) is filed by the plaintiff/respondent under Rule 5 of Order 41, seeking stay to the order of the Trial Court and claiming a relief of restraining the defendants/petitioners from interfering with her possession over the property-A and further restraining the defendants/petitioners from alienating or creating third party interest over the suit property described in Para-1B of the plaint.

3. The Appellate Court after hearing the parties has allowed the application and has granted injunction in following terms;

"2. The defendants/respondents are hereby restrained by temporary injunction from obstructing transferring and interfering the plaintiff/appellant's possession over the suit property described in plaint para No.1A, till the decision of the appeal.

3. The defendants/respondents are hereby further restrained by temporary injunction from alienating, obstructing, transferring, interfering or creating any third party interest over the suit property of the plaintiff/appellant described in plaint para No.1B, till the decision of the appeal."

This order is impugned in the present petition.

4. I have given due consideration to the rival submissions advanced by the learned Advocate for the petitioners and the learned Advocate for the respondent. I have perused the writ petition memo and annexures to the writ petition.

5. It is not in dispute that the Trial Court has partly allowed the suit and has granted relief only to the extent of property described in plaint Para-1A. No relief is granted to plaintiff in respect of suit property described in plaint Para-1B. When the substantive appeal of the plaintiff is pending, the Appellate Court has granted injunction even in respect of property described in Para-1B of plaint, mainly on the ground that if the order of restraining the defendants from alienating the suit properties is not granted, the things could become irreversible giving rise to further complications in the dispute.

6. At the time of issuance of notice, this Court has passed following order:

"1. The petitioners, who are original defendants in R.C.S. No.67/2013, have suffered the Judgment and Order dt. 02.02.2018, delivered by the trial Court partly decreeing the suit and declaring that the plaintiff is the owner of Survey No.66/3, ad-measuring 0.58 R. The plaintiff preferred R.C.A. No.23/2018 before the appellate Court and while seeking an order under Application Exh.7, the appellate Court has passed the impugned order restraining these petitioners from obstructing, transferring and interfering in the plaintiff's possession over the suit property described in plaint para no.1A. The pleadings in the plaint indicate that, the property A is a total area of 0.58 R.

2. The learned counsel points out that the trial Court, while decreeing the suit partly, held that the plaintiff is the owner of the property in Survey No.66/3, ad-measuring 0.58 R, which is property 'A' in the suit. Grievance is that, the appellate Court has passed an impugned interlocutory order restraining the petitioners from alienating or transferring or creating third party interest or obstructing and interfering in the property and the grievance is restricted only to the words "obstructing and interfering". The petitioners claim to be in possession of the suit property 'B' and the plaintiff is misinterpreting the words "obstructing or interfering" to mean as if she is in possession.

3. Issue notice to the sole-respondent, returnable on 15.11.2019. Until then, the words "obstructing and interfering" appearing in para 16(3) of the impugned order, shall stand stayed."

7. In view of the aforesaid facts, the writ petition is partly allowed. The words "obstructing and interfering" appearing in Para-16(3) of the impugned order, are hereby quashed and set aside.

8. Taking into consideration the fact that the original plaintiff/respondent herein is old lady of more than 71 years, hearing of the appeal is expedited.

[NITIN B. SURYAWANSHI, J.]